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REPORTER'S RECORD  
VOLUME 39 OF 55  
TRIAL COURT CAUSE NO. 1184294D  
COURT OF APPEALS NO. AP-76,596

STATE OF TEXAS                    ) (       IN THE 432ND JUDICIAL  
                                      ) (       DISTRICT COURT OF  
VS.                                    ) (       TARRANT COUNTY, TEXAS  
JOHN WILLIAM HUMMEL                ) (

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TRIAL ON THE MERITS

FILED IN  
COURT OF CRIMINAL APPEALS  
FEB 02 2012

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Louise Pearson, Clerk

On the 21st day of June, 2011, the  
following proceedings came on to be heard in the  
above-entitled and -numbered cause before the Honorable  
Ruben Gonzalez, Jr., Judge Presiding, held in Fort  
Worth, Tarrant County, Texas:

Proceedings reported by machine shorthand.

ANGIE TAYLOR, CSR, RPR  
Official Court Reporter  
432nd DISTRICT COURT

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## PROCEEDINGS

(June 21, 2011 ~ 9:07 a.m.)

(Open court, Defendant present, no jury)

THE COURT: We're back on the record in the John Hummel case.

Previously -- or yesterday, the Court was provided with a question with regard to a series of video recordings that were taken place at an E-Z Mart, a Walmart -- and was there another location, State?

MR. BRISSETTE: E-Z Mart and Walmart have been talked about so far, Your Honor, and there's footage -- hyper technically from an ATM -- a banking establishment inside a Walmart.

THE COURT: All right. And at that time the Defense made an objection on the basis that there was a lack of foundation or the requisite basis for the admission of the evidence had not been satisfied.

The Court has been provided some evidence or provided case law to review and has done so and considered it. Tentatively, it's the Court's conclusion, based upon the Angleton Case, 971 S.W.2d 65, and in a underpinning contained within Darnell Alonzo Page v. State -- and I do not have the cite with me, but the Court of Appeals cause number is 01-02-1213 CR, contains an underpinning of a Reavis v. State from the

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Fort Worth Court of Appeals, the 2002 84 S.W.3d 716, that addresses specifically the admittance of the security videotape.

Now, I would like to ask the Defense, have you had an opportunity to review the case law that was provided by the State, and do you have a response?

MR. CUMMINGS: I have no response this morning, Your Honor.

THE COURT: All right. Now, I will ask, do you believe it's necessary for the Court to conduct an examination of the videotape before admitting it, or based upon your knowledge, have the requisites been satisfied based upon the Rule of Evidence 901 and the Angleton case, the Reavis case I cited to and the Alonzo Page v. State case?

MR. MOORE: No, I still -- I still object to the admission. I don't -- I still don't think they laid the predicate. He said that he didn't know. He couldn't -- it was his opinion that there been no alteration of the tape, but he didn't know that as a fact, and there's been no testimony.

In Angleton, a lot of the admissibility of the tape turned upon the fact that it was taken from the person of the Defendant. And in this particular instance, our problem is we don't have anybody that has

had custody of the tape up until the time that Mr. Van Der Leest took it to testify that it was not materially altered in any way.

THE COURT: All right. And under Rule 901, that's not required.

MR. MOORE: Well --

THE COURT: I understand your objection, and I'm overruling it on that basis.

MR. MOORE: That's fine, Judge.

THE COURT: Now, with regard to -- do you want me to review the tape to determine whether or not the evidence sufficient (sic) to support a finding that the matter in question is what the proponent -- or what the State claims it to be?

MR. MOORE: It -- it would be my request that you do so.

THE COURT: All right. State, can you go ahead and set up the camera so that we can -- or the video, and I will have a couple of questions for Mr. Van Der Leest.

MR. BRISSETTE: And -- and, Judge, before -- while Mr. Van Der Leest is doing that, Page v. State is 125 S.W.3d 640.

THE COURT: Thank you.

MR. BRISSETTE: And Thierry vs. State, that

14

cites page that we used yesterday is 288 S.W.3d 80.

THE COURT: Thank you.

MR. BRISSETTE: Judge, we have him as, I think, chronological order. Van Der Leest can start with the E-Z Mart, which is State's Exhibit 432B, Your Honor, that we've offered for all purposes.

THE COURT: You may proceed.

(State's Exhibit No. 432B published)

THE COURT: State, what was that exhibit? 432; is that correct?

MR. BRISSETTE: 432B; as in boy, Yes, Your Honor.

THE COURT: Thank you.

ERNEST VAN DER LEEST, having been first duly sworn, testified as follows:

VOIR EXAMINATION

BY MR. BRISSETTE:

Q. Mr. Van Der Leest, I believe the next in the timeline is the Burleson Walmart; is that correct?

A. It is, sir.

MR. BRISSETTE: Judge, that would be 405B, as in boy.

(State's Exhibit No. 405B published)

Q. (BY MR. BRISSETTE) Investigator Van Der Leest, the ATM footage that you collected, does it come through

1 the store we just looked at in 405B?

2 A. It does, sir.

3 Q. And would that be State's 431?

4 A. I believe that's correct.

5 Q. Can you show the Judge State's 431 on the  
6 screen?

7 (State's Exhibit No. 431 published)

8 THE WITNESS: That's it.

9 MR. BRISSETTE: Judge, if I may, as part of  
10 our proffer to this while you're looking at it?

11 Q. (BY MR. BRISSETTE) Mr. Van Der Leest, you've  
12 had a chance to look at State's 343, have you not?

13 A. I have.

14 Q. There is an ATM receipt on State's 343. Do you  
15 recognize that receipt?

16 A. I do.

17 Q. And does it have a time stamp on it?

18 A. It does.

19 Q. And what is that time stamp?

20 A. 01:46:54 a.m.

21 Q. The State's 431 that's on the screen right now,  
22 were you able to look at the metadata associated with  
23 that video?

24 A. Yes.

25 Q. Did it have a time stamp as well?

16

1 A. It did.

2 Q. And what was the time stamp on the metadata?

3 A. 1:46:54.

4 THE REPORTER: I'm sorry?

5 THE WITNESS: 1:46:54.

6 Q. (BY MR. BRISSETTE) So the receipt that we're  
7 seeing here in State's 343, do you have an opinion as if  
8 it was generated while Mr. Hummel is standing there, or  
9 can you tell us that from the video?

10 A. The metadata is not displayed on the screen  
11 here, but this video displays Mr. Hummel at the ATM at  
12 the time this receipt was printed.

13 Q. And did they only have one -- you've been to  
14 the store, correct?

15 A. I have.

16 Q. You been to the bank and to the Walmart,  
17 correct?

18 A. I have been to the Walmart and to the loss  
19 prevention officer's office for the bank.

20 Q. Do you know if they have more than one ATM  
21 machine?

22 A. In that -- in that Walmart?

23 Q. Yes.

24 A. There's only one.

25 Q. All right. The next Walmart, I believe, is the

1 Walmart in Grand Prairie; is that correct?

2 A. That is correct.

3 THE COURT: Excuse me just -- the proffer  
4 that you were discussing, what was the metadata  
5 information that was retrieved from? What exhibit was  
6 that?

7 MR. BRISSETTE: Your Honor, we're -- on the  
8 screen we have State's Exhibit 431 displayed on the  
9 screen.

10 THE COURT: And the one that's been  
11 proffered right there?

12 MR. BRISSETTE: This is 343 that's already  
13 been admitted that Mr. Hummel gave to investigator Steve  
14 Steele.

15 THE COURT: Thank you.

16 Q. (BY MR. BRISSETTE) Investigator Van Der Leest,  
17 is the Grand Prairie Walmart, State's 406B, is that the  
18 next one in the timeline?

19 A. It is.

20 Q. And can you show 406B to the Judge, please?

21 (State's Exhibit No. 406B published)

22 MR. BRISSETTE: Your Honor, in continuation  
23 of the State's proffer --

24 Q. (BY MR. BRISSETTE) Mr. Van Der Leest, State's  
25 Exhibit 343 -- that's been admitted there to your

18

1 left -- does it have a Walmart receipt on it, sir?

2 A. It does.

3 Q. And what store is that? Are you familiar with  
4 that store that's depicted on the receipt, 343?

5 A. I am.

6 Q. Is that the receipt from the Grand Prairie  
7 Walmart?

8 A. It is.

9 Q. Is it a charge or cash transaction?

10 A. This is a charge -- this is a cash transaction.

11 Q. And what is it for?

12 A. It is for a knit top.

13 Q. And is that what's depicted there on the screen  
14 that we just saw in State's 406B?

15 A. It is.

16 Q. And what time was that based on the receipt?

17 A. 04:33:23.

18 Q. Is the Arlington Walmart, State's 407B, the  
19 next in the chronological timeline?

20 A. It is, sir.

21 Q. Can you show that to the Judge, please?

22 (State's Exhibit No. 407B published)

23 MR. BRISSETTE: Your Honor, in conference  
24 with Defense Counsel while we were showing that last  
25 exhibit, the State would anticipate adding one

1 additional piece of evidence that would be in the same  
2 line of objections, I think, from the Defense.

3 If I may, just briefly, with Mr. Van Der  
4 Leest put another number for your consideration while  
the jury is out?

6 THE COURT: You may.

7 Q. (BY MR. BRISSETTE) Investigator Van Der Leest,  
8 you had a chance to process video collected from the  
9 Coast Inn; is that correct?

10 A. I have.

11 Q. And that's been labeled as 408A, a copy on Gold  
12 Optical for the original; is that correct?

13 A. That is correct.

14 Q. And 408B, which is a copy for the jury; is that  
15 correct?

16 A. That is correct.

17 Q. And did you prepare both exhibits?

18 A. I did.

19 Q. And are you familiar with the contents on both  
20 exhibits?

21 A. I am.

22 Q. What are the contents?

23 A. The contents on A is the original data files  
24 from the DVR, includes the player and the video itself;  
25 and on the B case is a Quick Time video, H264 video, of

20

1 the cameras after I have edited them together.

2 Q. Have you had occasion to study what's on 408B?

3 A. I have.

4 Q. And as part of your analysis of 408B, do you  
5 look for class characteristics and unique  
6 characteristics of individuals depicted in 408B?

7 A. I do.

8 Q. With class characteristics, did you recognize a  
9 particular shirt that has been -- has been part of your  
10 investigation?

11 A. I did.

12 Q. What shirt is that?

13 A. It is a Mac Tools shirt.

14 Q. The Mac Tool shirt that's already been admitted  
15 into evidence would be consistent with that?

16 A. Yes.

17 Q. What are unique characteristics?

18 A. Unique characteristics, for example with the  
19 Mac shirt, would be if there was a hole in a specific  
20 location or a stain, maybe a bleach stain since this is  
a black shirt that's in a specific location. That would  
22 make it unique.

23 Q. Can people actually have unique characteristics  
24 to themselves?

25 A. They can.

1 Q. And have you been able to make observations of

2 Mr. Hummel's tattoos here this morning prior to your  
3 testimony?

4 A. I have.

5 Q. Are you able to look at Mr. Hummel's right  
6 forearm?

7 A. I did.

8 Q. Were you able to -- as part of your training  
9 with LEVA, is there a -- part of your certification,  
10 does that cover photographic comparison?

11 A. It does.

12 Q. And what is photographic comparison?

13 A. Photographic comparison is whenever you take a  
14 known image and you compare against an unknown image or  
15 items that are within that image.

16 Q. Can a known image also be a visual inspection  
17 by yourself as the -- as the forensic analyst?

18 A. It can.

19 Q. And did you conduct that this morning on Mr.  
20 Hummel?

21 A. I did.

22 Q. Do you have an opinion as to any unique  
23 characteristics that you observed on the individual on  
24 State's 408B?

25 A. I did.

22

1 Q. And what is that?

2 A. The tattoo that is on the right forearm is  
3 consistent with the tattoo that is on the right forearm  
4 of the individual in the videos.

5 Q. And 408A, the original, did you receive this  
6 from Investigator Jim Rizey?

7 A. I did.

8 MR. BRISSETTE: Your Honor, that would end  
9 our proffer on that. We would offer 408A for the record  
10 only, and we would offer in front of the jury 408B for  
11 all purposes.

12 THE COURT: Well, with regard to 408A at  
13 this time, do you have any objections?

14 MR. CUMMINGS: No, Your Honor.

15 THE COURT: 408A is admitted for the  
16 record.

17 (State's Exhibit No. 408A admitted)

18 THE COURT: Regarding 408B, any objection?

19 MR. CUMMINGS: I agreed to consider it at  
20 this time because I think it is -- the objection I have  
21 is going to be the same as I have to the -- the videos  
22 that you have observed up to this point.

23 THE COURT: All right.

24 MR. CUMMINGS: I'm not sure if we have them  
25 all played or not.

1 THE COURT: Do you have a copy of 408B for  
2 me to review, or do you have one in the video form that  
3 you're going to play?

4 MR. BRISSETTE: Yes, sir.

5 THE COURT: All right. You may proceed.  
6 Turn off the lights.

7 (State's Exhibit No. 408B published)

8 THE COURT: All right. And, Mr. Brissette,  
9 do you have any questions for Mr. Van Der Leest with  
10 regard to the exhibits?

11 MR. BRISSETTE: I believe that concludes  
12 the State's proffer at this time, Your Honor.

13 THE COURT: All right.

14 MR. CUMMINGS: Your Honor, may I ask a  
15 couple of questions --

16 THE COURT: You may.

17 MR. CUMMINGS: -- to clarify the exhibits?  
18 I'm not sure it's clear.

19 VOIR DIRE EXAMINATION

20 BY MR. CUMMINGS:

21 Q. Mr. Van Der Leest, when we are looking at the  
22 Walmart videos, that's a particular system that you have  
23 said a couple of times during your testimony. What is  
24 it?

25 A. There -- there's actually two systems. The

24

1 ones where you see the metadata on the screen are March  
2 Networks. The one from Grand Prairie where you do not  
3 see the metadata is a Verint Technology System.

4 Q. What the Judge has observed this morning, 432B,  
5 is -- is that a -- that's an E-Z Mart. In the case of  
6 432B, is this edited? Is this something that you  
7 compiled?

8 A. Yes. I took the different camera angles that  
9 the original files came in and edited them into a fluid  
10 video as he moved from one camera -- camera angle to the  
11 other.

12 Q. And that's also the case in 405B, the Burleson  
13 Walmart. That is a compilation of many different  
14 cameras, correct?

15 A. Yes, sir.

16 Q. And in discovery I was provided with several,  
17 or numerous camera shots from each of the Walmarts that  
18 went for 30 minutes some cases -- or, you know, they  
19 varied as far as length, correct?

20 A. Yes, sir.

21 Q. So you have gone through and extracted from  
22 those various cameras or various separate videos; is  
23 that correct?

24 A. That is correct.

25 Q. And edited it for what we have viewed here this

1 morning?

2 A. That is correct.

3 Q. And that is going to be the case with -- 431 is  
4 the ATM. Is that a -- just one camera shot?

5 A. Yes, sir, it is.

6 Q. Okay. And the only -- so any editing that may  
7 have occurred there is just to have the period of time  
8 in which the individual you believe to be John Hummel is  
9 depicted on that video, correct?

10 A. That is correct.

11 Q. As far as 406B, that's a Grand Prairie Walmart.  
12 That's again the same situation?

13 Now, wait a second. Did you say Grand  
14 Prairie is a different system?

15 A. It is.

16 Q. Okay. Is it -- I believe it's multiple  
17 cameras, though, is it not?

18 A. It is.

19 Q. So the same process applies?

20 A. Exactly the same process; although, with the  
21 Grand Prairie Walmart, because there was no on-screen  
22 metadata for me -- for me to be able to determine which  
23 camera view he moved from, I actually had the loss  
24 prevention officer come to the video lab.

25 And he sat down with me, and based on his

26

1 knowledge of the floor plan of the Walmart, he told me  
2 which camera angle to put first and then next and then  
3 next and next for the Court.

4 Q. Okay. The -- the next one is an Arlington  
5 Walmart. Again, the same situation. I -- I don't have  
6 the number down as far as the exhibit. I guess it's  
7 probably 40 -- 407B, and then 408B is the Coast Inn, the  
8 last one we saw that hasn't been dealt with yet. Even  
9 there, you have sequentially depicted three different  
10 cameras; is that correct?

11 A. No, sir. There's four different cameras.

12 Q. Four different cameras. Okay.

13 So the raw data, you get it, and then it  
14 shows the four different videos all running together.  
15 You have put it in such a situation that it is  
16 chronologically displayed?

17 A. Yes, sir.

18 Q. As far as this viewing of my client's right  
19 forearm this morning and comparing it to the video on  
20 the screen, specifically 408B, that's a pretty grainy  
21 shot from across the room in the manager's office, or  
22 whatever, of that Coast Inn. Are you relying upon that  
23 shot to make that comparison?

24 A. I am not. Throughout all these videos, you can  
25 see -- you can see in a darker image on the forearms on



1 the Walgreens video specifically. The detail is not  
2 sufficient enough to make out the shape per se except  
3 for the Walmart Arlington video when he's standing at  
4 the cash register. You can clearly see the shape of the  
tattoo there, and that is consistent with the shape of  
6 the tattoo that is in the Oceanside motel video.

7 Q. Yet the detail is not sufficient to identify  
8 the actual -- the tattoo -- or what -- what the tattoo  
9 is of, is it?

10 A. It is not.

11 Q. I mean, overall shape, but to discern what is  
12 actually supposed to be represented with the tattoo,  
13 it's not quite good enough, is it?

14 A. It -- it is not. It can give us the location,  
15 it can give us the -- the shape of the tattoo. But, for  
16 example, if it -- if it had the word "Mom" on -- written  
17 on it, these cameras and these surveillance systems do  
18 not have enough detail within them to be able to read  
19 that.

20 Q. When you testified that these exhibits have not  
21 been altered in any way, they have been edited. The --  
22 the subject matter remains the same, but you have cut  
23 and paste and created a video presentation for the jury;  
24 is that accurate?

25 A. That is correct.

28

1 Q. I'm going to take you back to Grand Prairie  
2 where you had to have the assistance of the loss  
3 prevention officer. You, working with your equipment  
4 downstairs on the other videos, rely upon some hidden  
5 metadata information that is displayed on your  
6 equipment, correct?

7 A. You have to go through a different process in  
8 order to get to it, but, yes, yes, you can see the  
9 metadata of the files.

10 Q. Did you rely on it for these other exhibits  
11 other than Grand Prairie?

12 A. I did not. On the ones where the metadata was  
13 displayed on the screen as the date and time, I relied  
14 on that.

15 Q. But as far as Grand Prairie, in that situation  
16 you had the assistance of whom?

17 A. I don't recall his name off the top of my head.  
18 I have it written down in my office in special crimes.

19 Q. And it was his -- it was that individual, that  
20 employee of Walmart, who directed you to display a  
particular camera in sequence with other cameras?

22 A. It was.

23 MR. CUMMINGS: That's all the questions I  
24 have.

25 THE COURT: All right. After reviewing the

1 videos contained in State's Exhibits 432 -- and I'm  
2 going in the sequence that it was presented -- 432, 405,  
3 431, 406, 407 and 408, the Court finds that under  
4 Rule -- Texas Rules of Evidence 9.01(b) and specifically  
5 3 and 4, that the Court -- the State has sufficiently  
6 established evidence sufficient to support a finding  
7 that the matter in question is what a proponent claims.

8 And that is Mr. Hummel traveling to and  
9 from the Walgreens in question and being videotaped, as  
10 well as photographed in the form of the ATM, the  
11 circumstances under -- under which those photographs  
12 were assembled and the videotape assembled is consistent  
13 with what has been presented to the Court; in addition  
14 to also confirmed by other exhibits formally, State's  
15 Exhibit 343, specifically, the ATM, as well as the  
16 transactional information from the Walmart.

17 As a result, the Court finds that the  
18 evidence is sufficient to support a finding that the  
19 matter in question is what a proponent claims.

20 Do you require any other findings, Defense?  
21 Your objection is overruled.

22 MR. MOORE: Judge, I have a particular  
23 objection that each of the exhibits have been modified  
24 from the original form in that they've been edited  
25 together to form what appears to be a sequential

30

1 photograph based on the time -- time and date stamp on  
2 the video in regard to all the videos except the Grand  
3 Prairie video. And there's no showing that the time and  
4 date stamp is correct in regard to those videos, and  
5 that the sequence -- sequence is correct.

6 THE COURT: And you're talking specifically  
7 with regard to the Grand Prairie, and that would be  
8 406B?

9 MR. MOORE: Well, Grand Prairie doesn't  
10 have any date stamp. He relied on some other witness  
11 who's not present to testify to tell him the sequence in  
12 which to place the various camera shots. So we don't  
13 know if that's a true and accurate representation of the  
14 way that it actually occurred or not.

15 That witness is not present, and there's --  
16 you know, he -- he said he based on his understanding or  
17 his testimony regarding the way that the various aisles  
18 ran and so forth. And so I think that the -- you know,  
19 by editing the tape together in that fashion and  
20 representing it as a sequential -- as one flowing  
21 sequence, he's relied on somebody else's advice as to  
22 the way that the aisles run in the thing, and there is  
23 no -- there's not any ability to verify that that's  
24 actually the sequence in which it occurred.

25 THE COURT: Okay. Now, I'm going -- for

1 the moment, I'm going to tell you I disagree with regard  
2 to the testimony.

3 Mr. Van Der Leest, didn't you previously  
4 testify that the information contained in 406B from the  
5 Grand Prairie Walmart, that does not include the  
6 information on the bottom of the screen but just merely  
7 the photograph, you retrieved the information, looked at  
8 the information based upon what was on the equipment?

9 THE WITNESS: That is correct. Whenever I  
10 retrieved it with the gentleman who came to my office,  
11 when I originally retrieved it from him at the Grand  
12 Prairie Walmart, I visually saw the time and date on  
13 their interface that they have. That's how we knew to  
14 locate these images on the time and date in question  
15 that we were looking for.

16 THE COURT: All right. Thank you, Mr. Van  
17 Der Leest, for clarifying that.

18 You're factually incorrect about what he  
19 contended there. It's still the Court's conclusion that  
20 that would be -- satisfy your Rule 901(b).

21 Any other objections or any other matters  
22 need to be taken up at this time?

23 All right. We'll take a ten-minute recess  
24 before we bring in the jury. Thank you.

25 (Recess from 10:11 a.m. to 10:29 a.m.)

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1 (Open court, Defendant present, no jury)

2 THE COURT: Back on the record.

3 Mr. Moore, Mr. Cummings, I understand that  
4 you want to take up one matter --

5 MR. MOORE: Yeah, Judge. They are -- it's  
6 my belief that they intend to offer some of the evidence  
7 that we have got -- you gave us the opportunity to  
8 review yesterday, the evidence that was taken from his  
9 property here in the sheriff's office. And I'm going to  
10 object to it at this point.

11 I am going to object to the introduction of  
12 any of that evidence, the introduction of any of that  
13 evidence on the basis that that's not been timely  
14 provided --

15 THE REPORTER: I'm sorry. I can barely  
16 hear you.

17 MR. MOORE: That the evidence was not  
18 timely provided to us pursuant to the orders of the  
19 Court. We think that there's a due process violation  
20 for us to get it this late in the game.

21 We also object to the introduction of the  
22 videotapes, which the Court has already ruled to be  
23 admissible, on the same basis. We got the raw footage.  
24 We never got the final exhibits that have been offered  
25 here in court.

1 And I think that the -- the purpose of our  
2 motion requesting that there be a date certain on which  
3 all the evidence will be provided to us is to allow us  
4 to adequately represent the Defendant, and to allow the  
5 evidence to come in in an untimely, fashion impacts our  
6 ability to do that. So I object to all those tapes, and  
7 I object to this evidence on that basis.

8 THE COURT: All right. State, do you have  
9 a response?

10 MR. BRISSETTE: Yes, Your Honor, but I'll  
11 do them in reverse order. First with the videotapes, it  
12 was during one of the hearings in chambers where Defense  
13 asked if we would have all the evidence available for  
14 them to preview prior to the commencement of trial.  
15 That was a discussion that was had back in chambers, and  
16 we said, Yes, we'll have stuff available.

17 The videotapes in the fashion it's been  
18 here have been in open court with all the evidence the  
19 Defense has flipped through the last two weeks. They've  
20 had a chance to see the stuff. It's been here  
21 available. It's been here ready to be viewed by whoever  
22 wants it.

23 They have the raw data. Everything that  
24 Mr. Van Der Leest has talked about the videotapes is  
25 contained in the raw data. The State has just put them

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1 in sequential order. We have not altered any evidence.  
2 We've simply prepared it where it's available for court.  
3 The Defense had all those. We gave those over in  
4 discovery.

5 With respect to the Defendant's clothes,  
6 yes, we did go get them yesterday with a subpoena. The  
7 State was put in a position last week when we went to  
8 offer records -- business records for Wells Fargo, that  
9 we could not link the records up even though they never  
10 filed the objection subject to the business records  
11 affidavit, as the Rules of Evidence state.

12 So the State was put in a position to  
13 further strengthen its position to get the rest of the  
14 records. And we went over and looked, and the wallet  
15 did contain a credit card that purports to be the same  
16 card that the -- Mr. Reeves testified to last week, the  
17 Wells Fargo expert that linked up the credit card that  
18 was found in the Defendant's possessions.

19 So all the information that's -- the  
20 Defense has been given in discovery all the information,  
21 all the clothing, the description of the wallet, the  
22 watch, the keys of Mr. Hummel and the discovery that was  
23 turned over from the San Diego County Jail.

24 Mr. Cummings' business card is actually in  
25 the pants pocket of the clothes that have been marked

1 for identification purposes now. They're the same  
 2 clothes and boots that Mr. Hummel wore the night he was  
 3 in court here on the 31st of December, 2009, and the  
 4 possessions that have been there, the wallet and such,  
 5 is all descript -- and talked about in the San Diego  
 6 County Jail records, which I believe have been filed  
 7 under seal, as well as part of business records  
 8 affidavits.

9 THE COURT: All right. You want to add  
 10 something more, Mr. Cummings?

11 MR. CUMMINGS: Just so the record is clear,  
 12 those are the clothes that Mr. Hummel had on when you  
 13 had him brought to this courtroom the day I was -- I met  
 14 him in this court. He was brought straight here before  
 15 he was booked into jail.

16 THE COURT: That is correct.

17 MR. CUMMINGS: So I met him, gave him my  
 18 card, we had our hearing about three hours, Mr.  
 19 Brissette and myself; and then he left here, was booked  
 20 into jail, and that's why my card is present.

21 Those clothes were just what he had on when  
 22 he finally got booked in later on that night on the  
 23 31st.

24 THE COURT: I'm going to allow the evidence  
 25 in, because in a form of rebuttal or anticipation that

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1 the State is offering additional evidence to support  
 2 their evidence. Accordingly, the information was  
 3 available to the Defense during the course of discovery.  
 4 May not have been in the exact form that's being  
 5 presented in the Court; however, the raw data and the  
 6 information was.

7 In addition to it, the Court does not find  
 8 that it's a violation of the Defendant's Sixth Amendment  
 9 rights due process claim. The Defendant has had  
 10 sufficient time to review the documentation;  
 11 furthermore, it was on notice with the pants and the  
 12 clothing that the Defendant was arrested in at the time  
 13 when counsel was appointed and to meet with the  
 14 individual.

15 These -- these items are not new in the  
 16 sense that this is evidence of a nature that should  
 17 surprise anyone because it has been in the custody of  
 18 the Sheriff's Department.

19 Are there any other matters or rulings that  
 20 you require before we proceed forward, Defense?

21 MR. MOORE: Only other objection to any of  
 22 the clothes is on the basis of the -- same basis as we  
 23 raised in the Pretrial Motions to Suppress, the illegal  
 24 nature of the arrest. They are a product of that, and  
 25 so we would continue those objections as to the clothes.

1 THE COURT: All right. I understand. Your  
 2 objection is overruled.

3 All right. Both sides ready for the jury?

4 MR. BRISSETTE: Yes, Your Honor.

5 MR. MOORE: Yes, Judge.

6 THE COURT: Thank you. Let's bring in the  
 7 jury.

8 (Jury present)

9 THE COURT: Good morning, members of the  
 10 jury.

11 All right. State, you may proceed.

12 MR. BRISSETTE: Your Honor, may the Court  
 13 inform the jury of its rulings regarding our evidence?

14 THE COURT: Yes. State's Exhibits 405B --  
 15 or 405A is admitted for the record only. 405B is  
 16 admitted for all purposes.

17 406A is admitted for the record only. 406B  
 18 is admitted for all purposes.

19 407A is admitted for the record only, and  
 20 407B is admitted for all purposes.

21 432A is admitted for the record only. 432B  
 22 is admitted for all purposes.

23 And then 431 is admitted for all purposes.

24 You may proceed.

25 (State's Exhibit Nos. 405A, 405B, 406A,

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1 406B, 407A, 407B, 432A, 432B, 431 admitted)

2 ERNEST VAN DER LEEST,  
 3 having been first duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. BRISSETTE:

6 Q. You're the same Investigator Van Der Leest that  
 7 was here yesterday, correct?

8 A. I am.

9 Q. You talked yesterday, I believe, briefly about  
 10 a system known as Avid; is that correct?

11 A. I did.

12 Q. And what is the Avid Forensic System that you  
 13 utilize?

14 A. The Avid System is a nonlinear editing system.

15 Q. Does it -- is it configured in two different  
 16 application settings for you? By that -- how many Avid  
 17 systems do you work on?

18 A. I -- I work on two.

19 Q. And how many does your partner work on?

20 A. Two.

21 Q. And you have a work station, a big work station  
 22 down in the lab?

23 A. I do.

24 Q. And you also have a smaller application there  
 25 on your laptop?



1 A. I do.

2 Q. The exhibits that the Judge just talked about  
3 in the jury's presence, do you have those loaded on your  
4 laptop today?

5 A. I do. They are on the hard drive -- or the  
6 external hard drive.

7 MR. BRISSETTE: Your Honor, with the  
8 Court's permission, I'd like to start with the first  
9 video, which I believe chronologically is from the E-Z  
10 Mart from the night of December the 17th.

11 THE COURT: Granted.

12 MR. BRISSETTE: May we take the lights  
13 down, Judge?

14 THE COURT: You may.

15 (State's Exhibit published)

16 Q. (BY MR. BRISSETTE) Mr. Van Der Leest, on that  
17 exhibit does the individual that's depicted in the  
18 center of the frame, did that individual go back out to  
19 a vehicle of some sort?

20 A. He does.

21 Q. And does that individual -- based on your  
22 observations, does that individual stay there for an  
23 extended period of time at the left rear quarter panel?

24 A. He does.

25 Q. And at some point does the individual leave?

40

1 A. He does.

2 Q. The next point in time for video that you  
3 collected, what store was that?

4 A. This was the Walmart in Burleson.

5 Q. I believe that is State's 405B. Is that your  
6 understanding, Mr. Van Der Leest?

7 A. That is correct.

8 Q. You have that loaded in the Avid forensic  
9 system?

10 A. I do.

11 Q. With the Court's permission, can you publish  
12 that to the jury?

13 A. Yes, I can.

14 (State's Exhibit No. 405B published)

15 Q. (BY MR. BRISSETTE) Investigator Van Der Leest,  
16 are you familiar with the exhibit -- I believe it's that  
17 paper right to your left there. Is that 343?

18 A. It is, sir.

19 Q. Are you familiar with an ATM receipt that's  
20 depicted in State's 343?

21 A. I am.

22 Q. And where is that ATM receipt from, sir?

23 A. It is from the First Community Bank that's  
24 located within the Walmart in Burleson, Texas.

25 Q. The footage that we just saw that had depicted

1 at the bottom of the screen the metadata front door

2 ice -- or front ice machine?

3 A. Yes, sir.

4 Q. Do you have an opinion as to what's at the end  
5 of that hallway or end of that store as one walks toward  
6 the top of the exhibit?

7 A. There is the -- the in-store bank.

8 Q. Did you collect digital assets from that  
9 in-store bank?

10 A. I did.

11 Q. Is that what's depicted on 431?

12 A. It is.

13 Q. Can you publish 431 to the jury, please?

14 (State's Exhibit No. 431 published)

15 THE WITNESS: That's it.

16 Q. (BY MR. BRISSETTE) 431, I believe, was a  
17 one-frame-per-second image; is that correct, sir?

18 A. That is correct.

19 Q. And for presentation purposes, did you hold the  
20 frame count for, I believe, ten frames?

21 A. I did.

22 Q. And that would be ten frames per second?

23 A. That is correct.

24 Q. On 343 what's the time stamp of the ATM  
25 receipt?

42

1 A. It is 01:46:54 a.m.

2 Q. Do you have video footage from a Walmart  
3 located in the city of Grand Prairie?

4 A. I do.

5 Q. I believe that's State's 406B; is that correct?

6 A. It is.

7 Q. Can you publish 406B for the jury, please?

8 (State's Exhibit No. 406B published)

9 Q. (BY MR. BRISSETTE) Investigator Van Der Leest,  
10 is part of this exhibit, which is 406B, were you able to  
11 identify a particular vehicle that a subject of interest  
12 of yours was driving?

13 A. Yes.

14 Q. And is that what we're seeing here to begin  
15 with?

16 A. Yes.

17 (State's Exhibit No. 406B published)

18 Q. (BY MR. BRISSETTE) And, Mr. Van Der Leest, to  
19 your left, State's 343, do you recognize contained on  
20 343 a receipt that you know to be generated by a  
21 corporation known as Walmart?

22 A. I do.

23 Q. Does that have a date and time?

24 A. It does.

25 Q. What is the date and time?

1 A. December the 18th, 2009, 04:33:23.

2 Q. How did the -- how does the receipt show that  
3 the bill was -- was settled?

4 A. This was a cash payment.

5 Q. With respect to 406B, as in boy, that's been  
6 debited on the screen, do you have an opinion as to the  
7 person of interest settled charges there on that deal?

8 A. It was a cash payment.

9 Q. And what was the receipt for?

10 A. The receipt was for a knit top.

11 Q. With respect to 431, 406B and 405B, do you have  
12 an opinion as to whether or not the person of interest  
13 in the video had a pen or a piece of paper in their  
14 hands to take down, say, prices?

15 A. I do.

16 Q. And what is that opinion?

17 A. I -- I never observed any action such as that.

18 Q. Do you have an opinion, in those same exhibits,  
19 as to whether the person was ever wiping their face or  
20 putting their hands to their face like they were either  
21 sneezing or wiping moisture from their nose or wiping  
22 their eyes?

23 A. I do not recall ever seeing that.

24 Q. I believe there's a video from an Arlington  
25 Walmart; is that correct?

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1 A. There is.

2 Q. And would that be 407B?

3 A. It is.

4 Q. And has the sun come up on December the 18th  
5 for that video, sir?

6 A. It has.

7 Q. With the Court's permission, can you publish  
8 407B?

9 A. Yes.

10 (State's Exhibit No. 407B published)

11 Q. (BY MR. BRISSETTE) Investigator Van Der Leest,  
12 if we were to continue 408 -- or excuse me -- the  
13 Arlington one, which is 407B, as in boy, what do we see  
14 going forward?

15 A. He exits the store and gets in his vehicle and  
16 the vehicle leaves the parking lot.

17 Q. Did you have an occasion, through the course of  
18 your investigation, to come into possession of digital  
19 assets from an establishment in the state of California,  
20 specifically, the Coast Inn?

21 A. I did.

22 Q. And who did you receive those from?

23 A. Chief Investigator Rzy.

24 MR. BRISSETTE: May I approach witness,  
25 Your Honor?

1 THE COURT: You may.

2 Q. (BY MR. BRISSETTE) Showing you what's been  
3 marked for identification purposes as 408B, as in boy.  
4 Do you recognize that?

5 A. I do.

6 Q. Do you recognize some of the handwriting on it?

7 A. I do.

8 Q. In fact, there's two different -- there's three  
9 different peoples' handwriting; the person that put the  
10 exhibit, as one. Do you recognize the handwriting at  
11 the bottom?

12 A. I do.

13 Q. Do you recognize initials, date up here at the  
14 top?

15 A. I do not know whose initials those are.

16 Q. Whose handwriting is at the bottom?

17 A. That's mine.

18 Q. Did you prepare this exhibit?

19 A. I did.

20 Q. And what's contained on 408B?

21 A. It is video footage from the Coast Inn in  
22 Oceanside, California.

23 Q. Were you able to take the raw images and  
24 prepare them for Court, much like you have the other  
25 exhibits that the jury's just seen?

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1 A. I was.

2 Q. Were you able to -- what does it depict?

3 A. It depicts Mr. Hummel registering and -- for a  
4 hotel room.

5 MR. BRISSETTE: We'd offer 408B at this  
6 time, Your Honor, tender to Defense.

7 MR. CUMMINGS: Your Honor, I make the same  
8 objections that we put forth this morning outside the  
9 presence of the jury, as to specifically Texas Rule of  
10 Evidence 901. We also renew our pretrial objections to  
11 the -- this exhibit.

12 THE COURT: Based upon the earlier hearing?

13 MR. CUMMINGS: Yes.

14 THE COURT: All right. Both of your

15 objections are overruled. State's Exhibit 408 (sic) is  
16 admitted.

17 And more specifically, I believe it's 408B.

18 MR. BRISSETTE: Yes, sir.

19 THE COURT: 408 is admitted for the record  
20 only (sic).

21 (State's Exhibit No. 408B admitted)

22 MR. BRISSETTE: May it be published as  
23 well, Your Honor?

24 THE COURT: It may.

25 (State's Exhibit No. 408B published)

1 Q. (BY MR. BRISSETTE) Investigator Van Der Leest,  
2 as part of your efforts in this case, did you receive a  
3 subpoena from our office yesterday to serve upon the  
4 Tarrant County Sheriff's Department?

5 A. I did.

6 Q. And who did you serve?

7 A. I served Chief Allen Dennis. He's the chief  
8 over the confinement bureau.

9 Q. Did Mr. Dennis give you a -- a box of items  
10 that was in his possession?

11 A. He did.

12 MR. BRISSETTE: May I approach the witness,  
13 Your Honor?

14 THE COURT: You may.

15 Q. (BY MR. BRISSETTE) Showing you what's been  
16 marked for identification purposes as State's 462, 463,  
17 and 464, and ask you to take a look at those and see if  
18 you recognize those items?

19 A. I do.

20 Q. Were these items that you collected yesterday?

21 A. They are.

22 Q. Can you -- what does 462 appear to be?

23 A. 462 is a men's tri-fold wallet, black in color.

24 Q. And 463?

25 A. Is a alarm key fob for what appears to be a

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1 Ford Windstar.

2 Q. And do you recognize the name that's depicted  
3 on the key for 464?

4 A. I do.

5 Q. Showing you what's been marked for  
6 identification purposes as 465A and B. Do you recognize  
7 465A and B?

8 A. I do.

9 Q. And were these items that you received from  
10 Chief Dennis as well?

11 A. Yes.

12 Q. Can you -- is there a description to give to  
13 465A and B?

14 A. Yes.

15 Q. What are they?

16 A. They are black steel-toe boots, manufacturer by  
17 Brahma.

18 Q. State's 466, do you recognize 466?

19 A. I do.

20 Q. And what is 466?

21 A. It is a black T-shirt.

22 Q. State's 467, do you recognize 467?

23 A. I do.

24 Q. And what is 467?

25 A. A pair of black men's slacks.

1 Q. Do they have a particular manufacturer?

2 A. They do.

3 Q. What is that?

4 A. Puritan.

5 Q. Do they have a size like a --

6 A. They do.

7 Q. Like a waistline?

8 A. 34/30.

9 Q. So 34 inches waistline; 30 inches in length?

10 A. Correct.

11 MR. BRISSETTE: Your Honor, at this time  
12 the State would tender to Defense Counsel State's 462  
13 and all of its contents, 463, 464, 465A and B, 466 and  
14 467.

15 MR. CUMMINGS: Your Honor, we renew our  
16 objections that we made prior to Mr. Van Der Leest's  
17 testimony here this morning before the jury.

18 Further, I object to 462, 63, 64, 65, 66,  
19 and 67 as to relevance.

20 THE COURT: Any additional objections?

21 MR. CUMMINGS: No, Your Honor.

22 THE COURT: Your objections are overruled.  
23 462, 463, 464, 465A and B, 466 and 467 are  
24 admitted.

25 (State's Exhibit Nos. 462-464, 465A,

50

1 465B, 466-467 admitted)

2 MR. BRISSETTE: May I approach the witness,  
3 Your Honor?

4 THE COURT: You may.

5 Q. (BY MR. BRISSETTE) Investigator Van Der Leest,  
6 State's Exhibit 340B, can you read the manufacturer and  
7 the waist and length size of the fabric tag that's  
8 depicted inside the exhibit, please?

9 A. It is a Puritan tag, 34W by 30L.

10 Q. State's 464, sir, I asked you a minute ago if  
11 you recognized the name on the exhibit. Can you tell  
12 the members of the jury what establishment this key  
13 belongs to?

14 A. Coast Inn.

15 Q. Do you know a particular room number on here?

16 A. 214, I believe.

17 Q. Let's not guess if we have the number.

18 A. 24.

19 Q. As part of your work in this case, do you  
20 review records that are obtained through the Grand Jury  
21 process to look for further digital assets?

22 A. I do.

23 Q. Did you have an occasion to look at some  
24 banking records in this case?

25 A. I did.

1 Q. And what was the purpose of your review of  
2 banking records?

3 A. To determine whether or not there was any other  
4 video assets that may be related to this case.

5 Q. Did you have an occasion to look specifically  
6 at some Wells Fargo records?

7 A. I did.

8 Q. Were you able to make any observations whether  
9 or not a merchant by the name of E-Z Mart Joshua were in  
10 those records?

11 A. They -- I did.

12 Q. And prior to your testimony today in the  
13 courtroom, did you take out a larger exhibit, records  
14 that just pertained and had references to the E-Z Mart,  
15 other events that you know are related specifically to  
16 this case?

17 A. I did.

18 MR. BRISSETTE: May I approach the witness,  
19 Your Honor?

20 THE COURT: You may.

21 Q. (BY MR. BRISSETTE) Investigator Van Der Leest,  
22 I'm going to show you what's been marked for  
23 identification purposes as 273F, as in Frank. Do you  
24 recognize this exhibit?

25 A. I do.

52

1 Q. Have you had a chance to review the pages that  
2 are contained in that exhibit?

3 A. I have.

4 Q. And do those pages depict transactions from  
5 somebody's account?

6 A. It does.

7 Q. And through your investigative years of  
8 service, I guess for lack of a better term, have you  
9 come to figure out how to read and translate banking  
10 records?

11 A. Somewhat, yes.

12 Q. With specific to Wells Fargo, have you learned  
13 how to translate particular charges used by different  
14 credit cards?

15 A. Yes.

16 Q. In looking inside 462, if I showed you a Wells  
17 Fargo credit card that ended in 5408, do you see credit  
18 card transactions or debit card transactions that end in  
19 5408 contained in 273F, as in Frank?

20 A. I do.

21 Q. For the E-Z Mart charges in -- in Joshua,  
22 Texas, do the last four digits end in 5408?

23 A. They do.

24 Q. Can you tell the members of the jury whose name  
25 appears on 462?

1 A. John W. Hummel.

2 MR. BRISSETTE: Your Honor, at this time  
3 the State would tender to Defense Counsel 273F and offer  
4 it for all purposes.

5 MR. CUMMINGS: May I ask Investigator Van  
6 Der Leest a couple of questions, Your Honor?

7 THE COURT: You may proceed.

8 VOIR DIRE EXAMINATION

9 BY MR. CUMMINGS:

10 Q. Investigator Van Der Leest, how many owners are  
11 there of that Wells Fargo account?

12 A. I believe there are three.

13 Q. The records that have been handed to me as  
14 273F, as in Frank, cover a period of time. Do you know  
15 what length of time?

16 A. I believe it begins September the 15th of 2009  
17 and ends January the 14th of 2010.

18 Q. These records reflect transactions from all  
19 three bank cards?

20 A. Yes.

21 MR. CUMMINGS: Your Honor, my objection to  
22 this exhibit is that it's overbroad. It -- it starts in  
23 early September -- actually, the first record I see, it  
24 may very well cover from 9/15 --

25 THE COURT: Let me visit with the lawyers

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1 on the side about the exhibit. Thanks.

2 (BENCH CONFERENCE PROCEEDINGS)

3 THE COURT: Okay. Which are you interested  
4 in?

5 MR. BRISSETTE: I'm interested in all  
6 the -- to start with --

7 THE REPORTER: I'm sorry. Can you speak  
8 into the microphone?

9 MR. BRISSETTE: Yes, ma'am. My apologies.  
10 To start with, Judge, we're interested in  
11 all the E-Z Mart transactions. Mr. Van Der Leest went  
12 through the large exhibit last week, as I thought that  
13 the Court's instruction, the Defense objection was --  
14 and we found just the pages in the banking records that  
15 contained E-Z Mart transactions. Every E-Z Mart Joshua  
16 transaction links back to the Defendant's credit card.

17 THE COURT: Okay. So each page has one of  
18 those E-Z Mart transactions on it?

19 MR. BRISSETTE: Yes, sir. And if it  
20 doesn't have an E-Z Mart transaction on it, it gets into  
21 the -- when the time we're talking about of the offense  
22 date, December 17th and December 18th, where we have  
23 charges for the night of the offense and then flight  
24 from the offense to California.

25 MR. CUMMINGS: The --

1 THE COURT: I'm listening.

2 MR. CUMMINGS: Okay. The exhibit starts --  
3 first transaction, I think, is 9/21, which is remote in  
4 time from the sequence of events that are -- make it  
5 a -- that this trial is based on. The E-Z Mart is not  
6 the scene of this offense. I don't think we've had --  
7 I'm trying to remember. I don't think we've had any  
8 testimony that that particular location is relevant at  
9 all to the case at this point.

10 THE COURT: Okay. Let me ask a question.

11 MR. BRISSETTE: Yes.

12 THE COURT: Isn't there testimony with  
13 regard to Mr. Hummel meeting with Ms. Freeze at the E-Z  
14 Mart?

15 MR. BRISSETTE: Yes, Your Honor.

16 THE COURT: And that's contained within the  
17 video confession that was taken --

18 MR. CUMMINGS: Yes.

19 THE COURT: -- over at the San Diego jail?

20 MR. BRISSETTE: It is contained there where  
21 he was asked by Sergeant Carlson how long he's been  
22 thinking about this. And I don't want to misquote it,  
23 Judge. It's either a couple months or several months,  
24 and this is -- the first couple of pages of this, in  
25 fairness to the Defense, is the first references is in

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1 the larger exhibit that's an A number for what you have  
2 in front of you. It's the first reference to E-Z Mart.

3 The State's position with the -- with the  
4 phone records that would come in behind this is you see  
5 transactions to begin with of fuel and -- and what we  
6 believe is cigarette purchases here, and then it  
7 progresses to where Mr. Hummel says in his statement  
8 that began with calling and then texting.

9 Then the two documents, when you look at  
10 them together, in addition to his statement, corroborate  
11 not only as motive, but put the timeline in contextual  
12 references together that he was frequenting the  
13 establishment, and this is where he met Ms. Freeze.

14 THE COURT: Okay. Do you have anything  
15 else to add?

16 MR. CUMMINGS: No, Your Honor. I've made  
17 all the objections I have --

18 THE COURT: The State has -- has clearly  
19 established the relevance of State's Exhibit 273 in  
20 relation to the video confession that was taken by --  
21 from John Hummel at the San Diego County Jail. In  
22 addition to it, it is contextual in time. It is  
23 tailored to identify those specific dates, and  
24 therefore, it is not overbroad.

25 Your objection is overruled. 273F will be

1 admitted.

2 MR. CUMMINGS: I had an objection as to  
3 relevance as well.

4 THE COURT: I did. And I also established  
5 it by -- based upon that the context of what was  
6 discussed in the form of Mr. Hummel's testimony or  
7 confession and that it corroborates that information and  
8 he discusses, regarding Ms. Freeze, how they first met  
9 and that he would meet her at the E-Z Mart in Joshua,  
10 Texas, and it specifies that in 273F.

11 MR. CUMMINGS: So my objection is  
12 overruled?

13 THE COURT: Your objection is overruled.  
14 (OPEN COURT PROCEEDINGS)

15 THE COURT: Members of the jury, 273F is  
16 admitted.

17 (State's Exhibit No. 273F admitted)

18 DIRECT EXAMINATION (Cont'd)

19 BY MR. BRISSETTE:

20 Q. Mr. Van Der Leest, directing your attention to  
21 the last two pages of the Exhibit 273F, first I'd like  
22 to have you look at the second to last page on 273F and  
23 see if it is an identical representation to 273B, as in  
24 boy?

25 A. It is.

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1 Q. Has 273B, as in boy, been highlighted down in  
2 your digital evidence lab?

3 A. Yes.

4 Q. Would 273B aid in your testimony today before  
5 the jury to explain these records?

6 A. It would.

7 Q. If you could look at the last page in 273F,  
8 sir. I'll show you what's been marked for  
9 identification purposes as 273C, ask you to do the same  
10 thing to compare if the -- the background, the actual  
11 black text, is consistent with the last page of 273F.

12 A. It is.

13 Q. And has the other highlighting and lettering  
14 been added by your team down in the lab to aid you in  
15 your testimony today before the jury?

16 A. It has.

17 MR. BRISSETTE: Your Honor, at this time  
18 the State will offer 273B and C for demonstrative  
19 purposes before the jury.

20 MR. CUMMINGS: I have no additional  
21 objections to 273B and C.

22 THE COURT: Your objection continues to be  
23 overruled. 273B and C are admitted for demonstrative  
24 purposes.

25 (State's Exhibit Nos. 273B, 273C admitted)



1 MR. BRISSETTE: May they be published, Your  
2 Honor?

3 THE COURT: They may.

4 Q. (BY MR. BRISSETTE) Mr. Van Der Leest, did you  
5 take those bank records and make contact with some  
6 establishments throughout the southwestern part of the  
7 United States?

8 A. I did.

9 Q. Showing you what's been marked for  
10 identification purposes as State's 445. Did you prepare  
11 or assist in preparing 445 for -- for presentation  
12 before the jury today?

13 A. I did.

14 Q. Are you familiar with the items that are  
15 depicted with the different colored flags and symbols on  
16 445?

17 A. I am.

18 MR. BRISSETTE: Your Honor, at this time  
19 the State would tender to Defense 445 and offer it for  
20 demonstrative purposes before the jury.

21 MR. CUMMINGS: Your Honor, I have no  
22 objection to State's 445.

23 THE COURT: It is admitted for  
24 demonstrative purposes.

25 (State's Exhibit No. 445 admitted)

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1 MR. CUMMINGS: Your Honor, may I move so  
2 that I can observe?

3 THE COURT: Please.

4 Q. (BY MR. BRISSETTE) Investigator Van Der Leest,  
5 let's see if we can walk through this without tripping  
6 over everything.

7 In State's Exhibit 273C, were you able to  
8 identify some fueling locations throughout the  
9 southwestern part of the United States?

10 A. I was.

11 Q. And were you able to make contact with certain  
12 fueling locations or gasoline merchants throughout the  
13 southwest part of the United States?

14 A. Yes.

15 Q. Can you take the members of the jury through  
16 what you did as part of your investigation?

17 A. After looking at the bank records, I -- I  
18 noticed a transaction in Midland, Texas. I contacted  
19 the Town and Country corporate office located in  
20 Houston, as I recall, and attempted to get video from  
21 the store for the same time that this transaction  
22 occurred, and I was unable to get video from them.

23 Q. Did you next make an attempt to locate digital  
24 assets in New Mexico?

25 A. I did. I contacted the sheriff's office in --

1 in that county, Vado, New Mexico, and requested the same  
2 and was told that there was no one there that had the  
3 capability of retrieving anything like that.

4 Q. Did you attempt to contact a Chevron in Tucson,  
5 Arizona?

6 A. I did. I contacted the Tucson, Chevron, and  
7 they said there was no video available.

8 Q. El Centro, California?

9 A. El Centro, I contacted a person at the store.  
10 I had some communication issues. They -- they spoke  
11 Spanish primarily as their primary language, and they  
12 said that they would have a manager call me back.

13 I attempted on two other occasions to  
14 contact that manager and was never able to get through  
15 to anyone to recover that.

16 Q. Are you familiar with a 1998 Ford Windstar and  
17 its capacity for fuel?

18 A. I am.

19 Q. Are you familiar with the EPA studies for that  
20 vehicle for that model year as to miles per gallon?

21 A. I am.

22 Q. What is the approximate range of fuel, if it's  
23 a full load, between -- for a 1998 Ford Windstar?

24 A. About 320 miles.

25 Q. You've had a chance to prepare the exhibit, I

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1 believe, 445, the map. Were you able to do distance  
2 measurements between the locations that are depicted on  
3 the map?

4 A. I was.

5 Q. And are those within range of the fuel load for  
6 the 1998 Ford Windstar based on the federal government  
7 standards?

8 A. It is.

9 Q. Also on the -- I believe the last page of your  
10 exhibit there, 273F in front of you, do you see a credit  
11 card transaction that's one, two, three, four, five  
12 lines down from the header?

13 A. I do.

14 Q. And do you recognize that establishment in  
15 Joshua, Texas?

16 A. I do.

17 Q. And what is the transaction date for that, sir?

18 A. 12/16.

19 Q. Mr. Van Der Leest, as part of your preparation  
20 for court, did you print a number of stills from the  
21 exhibits that we've seen here today?

22 A. I did.

23 Q. And do these stills highlight some different  
24 parts of the exhibits for your testimony today before  
25 the jury?

1 A. It does.

2 Q. You've had a chance to look at State's Exhibits  
3 412 through 427, inclusive, have you not?

4 A. I have.

5 Q. And are those exhibits that you prepared  
6 yourself?

7 A. I did.

8 Q. And have you had a chance to look at State's  
9 447 through 460, inclusive?

10 A. I have.

11 Q. And are those images that you prepared in  
12 preparation for your testimony today?

13 A. They are.

14 MR. BRISSETTE: Your Honor, at this time  
15 the State would tender to Defense Counsel State's 427  
16 and offer at this time for the record only, just 427.

17 MR. CUMMINGS: No objection to 427 being  
18 offered for the record only.

19 THE COURT: 427 for the record only is  
20 admitted.

21 (State's Exhibit No. 427 admitted)

22 MR. BRISSETTE: We would tender to Defense  
23 Counsel State's 412 through 426 and then 447 through 460  
24 inclusive and offer those for all purposes.

25 MR. CUMMINGS: Your Honor, regarding

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1 State's Exhibit 412 through 426, we have the same  
2 objections for these exhibits as we put forth for the  
3 videotapes from which they are taken.

4 Further, they are, in fact, duplicative of  
5 the exhibits that the jury has already observed this  
6 morning on the source videotapes. We object on that  
7 basis as well.

8 And just so that it saves a little time, I  
9 have the same objections to 447 through 460.

10 THE COURT: I need to talk to the lawyers  
11 just briefly.

12 MR. CUMMINGS: Do you need the exhibits,  
13 Your Honor?

14 THE COURT: No.

15 (BENCH CONFERENCE PROCEEDINGS)

16 THE COURT: Regarding your objection, I  
17 wanted to do it outside the presence of the jury. I  
18 wanted to rule on it, but I also wanted to articulate  
19 the reasons for it.

20 I'm going to overrule your objection. I'll  
21 give a continuous running objection. However, part of  
22 that is based upon your claim that the authentication  
23 comes into question. The admissibility of that evidence  
24 should be brought -- is -- has already been decided by  
25 the Court based upon what I've articulated. But in

1 addition to it, the still photographs would be helpful  
2 as an aid to the jury to determine the accuracy of the  
3 video. In addition to it, to look for characteristics  
4 that would identify clearly the Defendant and those  
5 videotapes. Accordingly, it is not duplicitous -- or  
6 duplicative, excuse me, and therefore should be and will  
7 be admitted.

8 All right. Thank you.

9 MR. BRISSETTE: Yes, sir.

10 (OPEN COURT PROCEEDINGS)

11 THE COURT: Members of the jury, 427 (sic)  
12 is admitted for the record only. Exhibits 412 through  
13 426 are admitted for all purposes, and State's Exhibits  
14 447 through 460 are also admitted. The Defendant's  
15 objection is overruled.

16 (State's Exhibit Nos. 412-426,  
17 447-460 admitted)

18 THE COURT: You may proceed.

19 Q. (BY MR. BRISSETTE) Investigator Van Der Leest,  
20 in your forensic field, is there a science known as  
21 photographic comparison?

22 A. There is.

23 Q. Can you explain to the jury what photographic  
24 comparison means to you as a forensic video analyst?

25 A. It is the process by which you take a known

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1 image and you compare it against an unknown image for  
2 unique and class characteristics.

3 Q. Let's start with unique. What are unique  
4 characteristics?

5 A. A unique characteristic would be something that  
6 would set a person or an object apart from all others.

7 Q. What are class characteristics?

8 A. Class characteristics are characteristics that  
9 would put it into a class, such as a four-door  
10 automobile, a pickup truck, a short-sleeve shirt, et  
11 cetera.

12 Q. You've had an occasion to testify as an expert  
13 in this field as well before in state district court,  
14 have you not?

15 A. I have.

16 Q. Have you used photographic comparison to rule  
17 individuals into a situation and, in addition, rule  
18 people out of a situation?

19 A. I have.

20 Q. I believe you have in front of you a blue  
21 binder labeled State's Exhibit 446; is that correct?

22 A. I do.

23 Q. Did you generate 446?

24 A. I did.

25 Q. How many pages are contained in 446?

1 A. 60.

2 Q. How many image pages?

3 A. 59.

4 Q. And there's a -- a face page, is there not?

5 A. There is.

6 Q. So a total of 60 pages?

7 A. Correct.

8 Q. What's contained on those 60 pages?

9 A. These are still images taken from the assorted  
10 videos depicting certain things within each image that I  
11 wanted to make sure that the trier of fact was aware of.

12 Q. Are you able, as part of your investigation, to  
13 have access to physical items of evidence?

14 A. I am.

15 Q. And did you have opportunity, prior to them  
16 being admitted into the courtroom, to take those into  
17 the photographic booth down on the fourth floor and  
18 actually photograph those images?

19 A. We did.

20 Q. Does that then become your known?

21 A. It does.

22 Q. Are you able to take a known then and compare  
23 it to the video exhibits that we've shown the jury this  
24 morning?

25 A. I am.

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1 Q. And are your opinions as to class and possibly  
2 unique characteristics contained in State's 446?

3 A. It is.

4 Q. And is that what you would be able to present  
5 as an expert here today as what's contained in 446?

6 A. Yes.

7 MR. BRISSETTE: Your Honor, at this time  
8 the State would tender to Mr. Cummings State's 446 and  
9 offer it for all purposes.

10 MR. CUMMINGS: Your Honor, it's 59  
11 different images, and I need to ask Mr. Van Der Leest  
12 several voir dire questions outside the presence of the  
13 jury before we can deal with the admission of this  
14 particular exhibit.

15 THE COURT: All right. Members of the  
16 jury, since it's 10 till 12:00, we're going to go ahead  
17 and break -- allow you to break for lunch right now.

18 Please remember the Court's previous  
19 instructions. Do not discuss this case with anybody or  
20 amongst yourselves or discuss what court you're in right  
21 now as a juror.

22 Please be back at 1:30. Thank you very  
23 much. You're excused for lunch.

24 We'll take a ten-minute recess to take a  
25 look at the photographs.

1 MR. CUMMINGS: Thank you, Your Honor.

2 THE COURT: All right. Thank you. We'll

3 be in recess.

4 (Recess from 11:50 a.m. to 12:10 p.m.)

5 (Open court, Defendant present, no jury)

6 THE COURT: All right. Both -- everybody  
7 ready to go on the record?

8 MR. CUMMINGS: Yes, Your Honor.

9 THE COURT: Okay. The Defense has  
10 requested to have an opportunity to review 59 pages  
11 contained in State's Exhibit 446 for the purposes of  
12 objections and conducting a voir dire examination.

13 Mr. Cummings, you may proceed.

14 MR. CUMMINGS: Thank you, Your Honor.

15 VOIR DIRE EXAMINATION

16 BY MR. CUMMINGS:

17 Q. Mr. Van Der Leest, during the break, I was able  
18 to visit with you to kind of clarify some things from  
19 State's Exhibit No. 446, which is a notebook that  
20 contains 59 pages of photographs that you prepared and  
21 one page of text, correct?

22 A. That is correct.

23 Q. And what I'm able to -- or what you have told  
24 me during the break is that these -- these are  
25 comparisons of stills from the videos with some

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1 photographs you've taken of articles of clothing  
2 associated with John Hummel, correct?

3 A. Yes.

4 Q. The -- so the process -- well, would you  
5 describe the process for the Judge?

6 A. I'd be glad to.

7 Whenever we're processing video within that  
8 Avid nonlinear editor, we have the ability to look at  
9 each frame of video individually. In order to export a  
10 still image of that frame, it's as simple as placing an  
11 in and out marker on each side of that frame of video  
12 and then exporting it as a still image.

13 And it is from those still images that I  
14 exported from the multiple videos I worked in this case  
15 that you see on the pages of this -- of this image chart  
16 comparison.

17 Q. So, in fact, if -- because you've given me the  
18 benefit of the digital file as well, I -- I believe you  
19 intended to discuss your findings with the jury and  
20 display it on your projector digitally?

21 A. Correct.

22 Q. And as you progress through your digital  
23 presentation, the photos are added as you testify and  
24 the arrows -- or directing your -- our attention to what  
25 you're discussing in the photograph are added as you



1 progress through the slides?

2 A. That is correct.

3 Q. This is a presentation that deals with, first,  
4 the uniform shirt in pages 2 -- or 1 of 59 through 8 of  
5 59; is that correct?

6 A. I believe it is, yes.

7 Q. When you did this, you actually took the  
8 uniform shirt, the -- the piece of evidence to your lab  
9 and photographed it?

10 A. We photographed it on the fourth floor in what  
11 we call the green room. It's a photographic room that  
12 we have.

13 Q. A room within the District Attorney's Office  
14 that you-all have enhanced for that purpose,  
15 photographic purposes?

16 A. Yes.

17 Q. I mean, I'm not --

18 A. Yes. It is -- it is a room that we have set up  
19 for taking pictures, taking images of clothing, people,  
20 whatever we need to.

21 Q. Now, when you -- you've got additional training  
22 and education regarding forensic videos, correct?

23 A. Correct.

24 Q. In the exhibit that you have here, you have  
25 taken a slide or a frame from a -- a -- a frame from a

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1 video, and you are comparing it to that photograph you  
2 took in your green room.

3 A. Mark Porter actually took the photos.

4 Q. Okay. Fine.

5 Did you use any sort of measuring device to  
6 make the comparison between your known photograph and  
7 the excerpts from the videos?

8 A. I did not.

9 Q. Did you -- did you rely upon your -- a lot of  
10 different tools, really, your background as an  
11 investigator, as a street officer? You're -- just the  
12 fact that you're a man who's lived life and you make  
13 observations and you pay particular attention to  
14 details; is that correct?

15 A. Yes, sir.

16 Q. The next item that you apparently focus on is a  
17 black photograph -- excuse me -- black, button-up man's  
18 short-sleeve shirt with an emblem of some sort on the  
19 front, and you cover those comparisons with the video  
20 excerpt through -- the front is covered through 14 of  
21 59, correct?

22 A. Yes, sir.

23 Q. And then the back is covered from 15 through 19  
24 of 59, and then you focus on the hat, correct?

25 A. Yes, sir.

1 Q. And it runs through the sequence of photos

2 through 24.

3 Page 25 of 59, what is the focus there?

4 What are you doing?

5 A. My focus on this was to show the class  
6 characteristics of the hat that -- that is in evidence.

7 Q. Okay. One more slide. 25 of 59.

8 A. Oh, I'm sorry, sir.

9 Q. You -- you finish with the hat, and what is the  
10 next -- this next sequence that you're covering?

11 A. This -- this is an image taken from the ATM  
12 surveillance video.

13 Q. And so we're still addressing the same articles  
14 of clothing that you have discussed prior to this  
15 through the earlier sequences?

16 A. That is correct. In this image you can see the  
17 fedora hat, the dark hat with the light trim, and you  
18 can see the emblem on the front of the dark shirt.

19 Q. Okay. And to close out the subject matter, you  
20 then -- on page 42 of 59, you moved to a different  
21 garment, and you make similar comparisons?

22 A. That is correct.

23 Q. Okay. Thank you.

24 MR. CUMMINGS: Your Honor, my objection to  
25 the testimony from Investigator Van Der Leest is that

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1 it -- it's -- it invades the province of the jury. It's  
2 not necessary for any expertise to compare photographs  
3 and make observations from them.

4 There's no -- I mean, it's not a matter of  
5 showing dimensions are identical or, you know,  
6 scientific measurements are not used. It's -- it's -- a  
7 juror can look for themselves and compare photographs to  
8 this extent. Maybe -- maybe they wouldn't do it in  
9 detail.

10 And my objection is to Investigator Van Der  
11 Leest providing opinions as to these photographs.  
12 Opinions are reserved for expert testimony. I think  
13 this invades the province of the jury and goes outside  
14 his area of expertise.

15 He's learned a lot and provided the Court  
16 with testimony about videos and -- and what's entailed  
17 with videos and components of it that we might not  
18 otherwise know, but this is merely comparing photographs  
19 to see if they depict the same images. Every one of  
20 those jurors is just as capable of doing that as he or  
21 I. That's my objection, Your Honor.

22 MR. BRISSETTE: Your Honor, now that we're  
23 outside the presence of the jury, may I ask Mr. Van Der  
24 Leest a few more questions about his training in  
25 photographic comparison?

1 THE COURT: You may.

2 VOIR DIRE EXAMINATION

3 BY MR. BRISSETTE:

4 Q. Mr. Van Der Leest, as part of your photographic  
5 comparison, do you actually go to fabric school?

6 A. Yes.

7 Q. Can you explain to the Judge what we're talking  
8 about when I say fabric school?

9 A. Sure. The manufacturing process for clothing  
10 is -- is rather unique. In these images that we have  
11 here for this trial, the shirt, for example, being  
12 displayed now is on page 42/59 is a simple black T-shirt  
13 that has been screen printed with a logo for Mac Tools.

14 There -- there's no way for me to determine  
15 how many of these that were made because there's --  
16 during the process -- this is a simple black shirt.  
17 These are class characteristics that I'm pointing out.  
18 With -- with all of these images, it's class  
19 characteristics. It's not unique characteristics.

20 Q. With Mr. Cummings' pinstripe coat here, how the  
21 fabric lays and how the stripes come about on the  
22 lapels, would that be unique characteristics when you're  
23 looking at photographs and trying to compare fabric?

24 A. It -- it would if you could see the detail.

25 The coat that Mr. Hummel is wearing is actually a -- a

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1 better representative of -- if you could get the detail  
2 from the camera of where the seams come together.

3 Because the way clothing is manufactured,  
4 the cloth is laid out on a table, it has a pattern, and  
5 then it is cut, say, for example, for the front part of  
6 the shirt. And then the sleeves are cut from the sides  
7 of -- of that extra fabric. So whenever they are sewn  
8 together, chances are there's not going to be the same  
9 lines that come together at the same location on two  
10 shirts.

11 Q. Is photographic comparison, in your studies  
12 with LEVA, is that a sub discipline of your overall  
13 forensic video certification that you have?

14 A. It is a sub discipline of what we do.

15 Q. Is also a sub discipline if you want to do a  
16 height comparison of the individuals, you would go out  
17 and do a reverse projection?

18 A. Yes.

19 MR. BRISSETTE: Your Honor, I believe under  
20 Rodgers versus State, 205 S.W.3d 525, specifically at  
21 page 527, it discusses what needs to be met under Rules  
22 of Evidence 702.

23 And I have Stevenson versus State, which is  
24 304 S.W.3d 603, out of the Fort Worth Court of Appeals.  
25 It is published on video forensics and the disciplines

1 that are involved in it and how experts such as Mr. Van  
2 Der Leest would -- their testimony would have actually  
3 assist the trier of fact in deciding the case.

4 THE COURT: Do you have any additional  
5 questions, Mr. Cummings?

6 MR. CUMMINGS: No, Your Honor.

7 THE COURT: All right. Now, with regard to  
8 the -- the purpose of the proffer that's contained  
9 within State's Exhibit 446 --

10 MR. BRISSETTE: Yes, sir.

11 THE COURT: -- what is the purpose behind  
12 these -- the exhibit, if you can state it?

13 MR. BRISSETTE: Sure.

14 The attack -- or the voir dire has been  
15 from the Defense -- and it's been carried on through  
16 jury selection -- that if there are issues with the  
17 statement or if a statement is challenged, that they --  
18 I anticipate there will be a Jury Charge of they can  
19 disregard the items in the statement, have to consider  
20 the case based on everything other than what's in the  
21 statements themselves.

22 So the State has to prove up identity  
23 throughout the process that Mr. Hummel is one and the  
24 same that did these acts and was pertained -- or  
25 portrayed on these in his flight. If we're talking

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1 about the Mac Tool shirt, either when he gets his boots  
2 and goes to Oceanside for the other events that are  
3 contained therein, it goes to the identity of the  
4 individual.

5 And we're working two prongs here, Judge,  
6 not knowing what the -- the final Court's Charge is  
7 going to be. And it's a way for us, through the  
8 forensic process, to rule out all inconsistencies.

9 I believe Mr. Van Der Leest would tell the  
10 jury and tell the Court he found no inconsistencies.  
11 There are class characteristic consistencies throughout,  
12 and there are actually several unique consistencies  
13 throughout the images, that being the tattoo on the  
14 right forearm. And that's linking the individual  
15 together, because I think if you recall Mr. Van Der  
16 Leest's direct testimony when he was talking about the  
17 Walmart videos, we refer to the person as a person of  
18 interest because of the quality. You're not actually  
19 making a facial recognition ID. You're ID --  
20 identifying the clothes that have already been admitted  
21 in evidence and coming up with whether or not there's  
22 consistencies or inconsistencies.

23 You've seen the image quality. We're down  
24 to looking at pixels that are other than the face for a  
25 person such as Mr. Van Der Leest to make a call, and

1 that's the proffer on this.

2 THE COURT: All right. The Court finds  
3 that State's Exhibit 446 should be admitted for the  
4 following reasons: Based upon the review of the  
5 testimony, the information that's contained within 446  
6 perhaps would be of a clarifying value for the jurors  
7 because it identifies the specific clothing that's  
8 unique or has unique characteristics that was worn  
9 allegedly by the Defendant on the days in question in  
10 December, 2009.

11 As a result, the information that is  
12 proffered by the State for the purposes of identifying  
13 those characteristics that might otherwise escape the  
14 notice of the jurors would be helpful. It is also the  
15 State's responsibility to prove the case beyond a  
16 reasonable doubt.

17 As a result of those burdens and -- and the  
18 reasons that I've discussed, those -- the testimony of  
19 Mr. Van Der Leest should be and will be admitted as well  
20 as State's Exhibit 446.

21 Are there any other findings -- or  
22 objections that you may have, Mr. Cummings, Mr. Moore?

23 MR. MOORE: Just can we have a continuing  
24 objection to all the testimony?

25 THE COURT: Yes, you may.

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1 MR. MOORE: On that same basis that was  
2 enunciated?

3 THE COURT: All right. And have I  
4 addressed all your objections?

5 MR. MOORE: Yes, Judge.

6 THE COURT: All right. All right. Let's  
7 go ahead and take our lunch recess, and let's be back in  
8 an hour.

9 (Recess from 12:27 p.m. to 1:35 p.m.)

10 (Open court, Defendant present, no jury)

11 THE COURT: Both sides ready to proceed?

12 MR. BRISSETTE: State's ready.

13 MR. CUMMINGS: Yes, Your Honor.

14 During the break, I visited with Mr. Gill  
15 and Mr. Brissette regarding an exhibit or set of  
16 exhibits I anticipate we'll be seeing introduced here  
17 shortly, and I thought that we could deal with the  
18 Defense objections to those proposed exhibits.

19 And I'm talking about 229B through F, I  
20 think, Your Honor. They were offered through the  
21 MetroPCS custodian and introduced for purposes of the  
22 record only at that time. Mr. Brissette has amended his  
23 original exhibits trying to address some of my  
24 complaints about the subject matter, and I'd like to  
25 deal with my objections to what he has come up with with

1 his amendments or revisions, whichever word you choose.

2 THE COURT: Before we go any further, let  
3 me make sure I understand. Who's going to be the  
4 sponsoring witness in 229B1 through B -- I'm sorry --  
5 229B through E1?

6 MR. BRISSETTE: The sponsoring witness,  
7 Your Honor, would have been the custodian from MetroPCS  
8 when he put the initial records in. We have since done  
9 redactions to those, and the remaining items, I believe,  
10 are subject to the original offer from the custodian,  
11 who was here last week as to the entirety of it.

12 We have redacted out stuff that the Defense  
13 told us they would object to, and I think we have  
14 exhibits that are in a presentation format for all  
15 purposes before the jury for 29E-1 and 29C-1. Those  
16 belong to Joy Hummel's phone.

17 And there's one remaining phone number with  
18 respect to 29C-1 that Mr. Van Der Leest is familiar  
19 with, belongs to one Trish Murphy. With that, the  
20 numbers that are highlighted and contained in that  
21 exhibit have all been identified. At that point, once  
22 Mr. Van Der Leest says that in front of the jury,  
23 they've all been identified in open court.

24 So what's left in here has been identified  
25 for the jury. The phone numbers that are left in 29E-1

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1 have also all been identified in open court through  
2 testimony.

3 THE COURT: Okay.

4 MR. BRISSETTE: With respect to --

5 THE COURT: Let me ask some questions first  
6 off so I can just get clear. All right. Let's look at  
7 29 -- 229B1. Okay. The number, 817-770-3723, and who  
8 is that related to?

9 MR. BRISSETTE: Are we looking in Bravo 1,  
10 Judge?

11 THE COURT: Yes.

12 MR. BRISSETTE: 3723 is Joy Hummel.

13 THE COURT: And who is the one that  
14 identified Ms. Hummel's phone number?

15 MR. BRISSETTE: Ms. Hummel's phone number  
16 was identified by a gentleman by the name of Chris  
17 Paris. And you'll see, if you look at Ms. Hummel's  
18 records, which are text messages in 29E-1, you'll see  
19 that Mr. Paris' phone number and Ms. --

20 THE COURT: I'm sorry. Slow down.

21 Okay. What's the phone number that you're  
22 referring to at this point?

23 MR. BRISSETTE: Mr. Paris' phone number --  
24 you're asking how do I identify --

25 THE COURT: Yes.

1 MR. BRISSETTE: -- Ms. Hummel's phone

2 number?

3 THE COURT: And I already have Ms. Hummel's  
4 identified through Mr. Paris.

5 MR. BRISSETTE: Correct. I was just  
6 showing the Court through the records how we linked that  
7 together with Mr. Paris, and that was actually done in  
8 29C1 with Mr. Paris and Ms. -- Mrs. Hummel exchanging  
9 text messages.

10 THE COURT: Okay. So with regard to the  
11 others that you're identifying?

12 MR. BRISSETTE: (817) 212-8181 has been  
13 identified.

14 THE COURT: Who does that belong to?

15 MR. BRISSETTE: That belongs to Ms. Kristie  
16 Freeze.

17 THE COURT: And what testimony has  
18 identified that number with Ms. Freeze?

19 MR. BRISSETTE: Redirect examination of  
20 Chris Paris after Defense asked Mr. Paris if he ever  
21 made phone contact with Ms. Freeze.

22 There has also been testimony and -- and an  
23 exhibit, Judge, that I only have one copy of which is  
24 229F-1 that Mr. Paris also identified Ms. Freeze's phone  
25 number and -- and if you'll recall in 29F-1 -- 229F-1,

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1 that is subscriber information that the custodian from  
2 MetroPCS testified to.

3 At sidebar, Defense asked us to remove the  
4 MIN numbers from that and strike Mrs. Freeze's address,  
5 and they wouldn't have further objection to it, and  
6 that's what's listed in 229F-1. The redactions have  
7 been made in accordance with the instructions I received  
8 at the sidebar.

9 THE COURT: And that color coding remains  
10 consistent throughout all the exhibits?

11 MR. BRISSETTE: Yes, Your Honor.

12 THE COURT: Okay.

13 MR. BRISSETTE: The next number, if we're  
14 looking at B, as in boy, 1229B1 (sic) would be that  
15 number of (682) 558-3863. Mark Porter from our office  
16 identified that number to belong to a Gretchen Bow.

17 And then the last number that -- in the  
18 translation key in Exhibit B1 of 229, (817) 323-7667,  
19 was testified to by the owner of that phone number at  
20 the time, Chris Paris. So I believe in 229B1, we have  
21 identified all the phone numbers that are left and  
22 highlighted throughout the document.

23 Those numbers that are not contained in the  
24 translation key at the top have been stricken from the  
25 record, and the lines remain with the blue line number

1 to the left of it and gray boxes filling in the fields

2 where those phone numbers, any reference to date and  
3 time, source, destination or message have been removed,  
4 as indicated throughout the exhibit.

5 THE COURT: All right. Now, based upon  
6 the -- the representation of the State, Mr. Cummings, do  
7 you have any objections?

8 MR. CUMMINGS: We're dealing with the  
9 Exhibit 229B-1 only at the moment, aren't we, Judge? Is  
10 that what you're asking me?

11 THE COURT: Yes, B1.

12 MR. CUMMINGS: The -- these are text  
13 messages, Your Honor.

14 THE COURT: Well, first off is that -- let  
15 me address this part with you. The numbers that have  
16 been identified through the testimony of Mr. Paris, Mr.  
17 Harris, Ms. -- Mark Porter, those -- that testimony has  
18 identified and authenticated those numbers associated  
19 with those individuals on those dates, correct?

20 MR. CUMMINGS: Mark Porter indicated that  
21 he had reviewed records or something like that, and he  
22 associated those numbers with those names.

23 THE COURT: All right. Now, with regard to  
24 Mr. Paris, he had personal knowledge of those phone  
25 numbers, and he identified them through the course of

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1 his testimony, correct?

2 MR. CUMMINGS: He identified Joy's and --

3 THE COURT: And Mr. Hummel.

4 MR. CUMMINGS: And his own, and he -- he  
5 may have done Mr. Hummel.

6 THE COURT: Okay. Now, with regard to Mr.  
7 Paris, he testified and identified his number, correct?

8 MR. CUMMINGS: Yes.

9 THE COURT: All right. So there's no  
10 outstanding numbers that have not been identified  
11 through the various pieces of testimony at this time?

12 MR. CUMMINGS: Identification, correct.

13 THE COURT: Now, for the purposes of the  
14 record, that's been properly authenticated by the  
15 records custodian pertaining to those phone calls, and  
16 the State has redacted those other conversations that  
17 are not pertinent or relevant to the case.

18 MR. CUMMINGS: To some extent.

19 THE COURT: All right. Do you have any  
20 specific objections to any passages that you believe are  
21 not relevant? I'll consider them now at this point.

22 MR. CUMMINGS: Thank you, Judge.

23 The lady, Gretchen Bow, we object to her  
24 being included in this exhibit. She has -- her name was  
25 brought up, and Mr. Porter was -- Mr. Porter or Mr.



1 Paris, I cannot remember who the witness was -- was  
2 merely asked does this number belong to this person. If  
3 you'll look, Your Honor, the --

THE COURT: Which -- which one are you  
referring to?

MR. CUMMINGS: B1.

THE COURT: Thank you.

MR. CUMMINGS: That's -- that's -- that's  
why I wanted to do this outside the presence. It's very  
detail oriented stuff here.

She's identified with purple. That's  
probably not the right color, but that's what I'm going  
to call it, (682) 558-3863. My objection to anything in  
this document pertaining to her is a right to confront  
the witness. This is hearsay. It's not even relevant.  
They haven't established any sort of relevance.

This is for the benefit of the Court. This  
is allegedly a exotic dancer with whom there was some  
apparent communication between John Hummel and her.  
This is being offered to -- as character evidence, and  
we haven't heard from her. We don't know who she is --  
who she is. I -- I identify her as an exotic dancer  
merely because Mr. Brisette informed me that that's who  
she is or what she is.

THE COURT: Okay. Mr. Brisette, how is

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1 that relevant to this case regarding Ms. Gretchen Bow?

MR. GILL: Judge, if I could address that?

THE COURT: Yes.

MR. GILL: It's motive evidence. Mr.  
Hummel tells us on the interview that he gave  
Investigator Rizy in San Diego that he wanted to be  
single. And it's our theory that one of the reasons he  
wanted to be single is so he could pursue women like  
Gretchen Bow, who he's obviously pursuing, as you can  
see from the text of the text messages that's included  
in the exhibit.

We're not offering those items for the  
truth of the matter asserted, so they're not hearsay.  
We're offering -- offering them to show that those  
conversations were took -- took place and those  
statements were made by the Defendant.

So the relevance is motive. There's no  
hearsay implication because we're not offering it for  
the truth of the matter asserted. And we're not  
offering it for character. We're offering it for  
motive.

MR. CUMMINGS: Your Honor?

THE COURT: Yes, sir.

MR. CUMMINGS: If -- throughout the State's  
opening statement, they identified the object of their

1 motive, their proof of motive, and that is Kristie  
2 Freeze. She's the only one identified. She is  
3 identified in the videotaped statement taken in San  
4 Diego on 12/20/09 of John Hummel, and he specifically  
5 says Kristie Freeze on that tape.

Gretchen Bow is never mentioned anywhere  
else throughout the evidence of this case other than  
these text messages and the questions asked of the  
witness -- I think it was Porter -- that identified her.

Further, Gretchen Bow is in the text  
messages beginning on 11/13/09 and continuing through  
the early -- or no, not just early -- continuing through  
November. And it appears that the last entry is on  
12/5/09 if I've -- so it's not relevant to the conduct  
that this case is about. The time period is remote.  
It's before -- several days before. It has nothing to  
do with...

THE COURT: State, do you have a response  
to what the Defense has just urged other than what  
you've already previously stated?

MR. GILL: Well, just a -- just  
timeframe-wise, Mr. Hummel tells us on that interview in  
San Diego that his motive began a couple of months  
before he gave the statement in San Diego, so this is  
all relevant as far as time frame goes.

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THE COURT: All right.

MR. MOORE: Judge, we have one --

THE COURT: Mr. Moore, I have a tentative  
conclusion if you'd like to listen to it to exclude the  
testimony regarding those exhibits. Do you want to urge  
anything else?

MR. MOORE: Well, I -- we're talking about  
Gretchen Bow. I've got an objection to everybody,  
Kristie Freeze's --

THE COURT: All right.

MR. MOORE: -- testimony as well. While  
we're talking about it, I want to make sure.

You know, Mr. Gill has indicated that this  
evidence is being offered to show that the statements  
were made. I've got two big problems with that. One is  
they've got evidence that this text was made from that  
phone, but not any evidence as to who made the -- who  
texted that message or who received that message.

So in that regard they proved up, yeah, a  
text message was sent to that phone or a text message  
was received to that phone, but they haven't tied it to  
any particular individual.

The second and the more -- and the more  
cogent objection with all of these, Mr. Gill's indicated  
that they're not being offered for the truth of the

1 matter asserted, and if they're being offered as motive  
2 evidence, then they are. They are being offered for the  
3 truth of the matter asserted because that is the basis  
4 of the motive, is what they're saying.

5 It is hearsay, and more than that, it's  
6 Crawford evidence. It's communicated evidence to which  
7 we have a right to confront that person in court. And  
8 so we object on the basis of Crawford that we're being  
9 denied confrontation of that person that purportedly  
10 made that text message.. We don't have the right to  
11 cross-examine that person.

12 THE COURT: Well, the Court's opinion is  
13 that regarding the conversations or text messages  
14 between the Defendant and Gretchen Bow, it ends December  
15 5th. And with regard to that, the timelessness is a  
16 factor in the Court's opinion and, therefore, the -- the  
17 trans -- the communications or the transmittals that are  
18 going on between the two should be excluded.

19 Now, with regard to the Defendant  
20 communicating with Kristie Freeze and vice versa, the  
21 testimony has been thus far that was his motivating  
22 factor for committing or allegedly committing the acts  
23 of murder, capital murder and, therefore, should be  
24 considered by the -- the jury for -- under 404(b) for  
25 motive and intent.

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1 Now, regarding the Crawford objection,  
2 State, do you have a response?

3 MR. GILL: My response is we're not  
4 offering these matters for the truth of the matter  
5 asserted.

6 THE COURT: All right. I'm going to  
7 sustain the State's response or overrule your objection  
8 based upon Crawford objection, Mr. Moore.

9 Now, State, you will redact or however  
10 remove the communications from the Defendant to Gretchen  
11 Bow in the exhibits. And I'm examining specifically  
12 229B1.

13 Are there any other references to Ms. Bow  
14 contained in the other exhibits?

15 MR. BRISSETTE: I believe so, Your Honor.

16 THE COURT: Those also need to be removed.

17 All right. Are both sides ready to proceed  
18 with the jury?

19 MR. BRISSETTE: No, Your Honor. We have  
20 other exhibits that we need to get a ruling on from you  
21 outside the presence because I imagine they're going to  
22 have objections.

23 THE COURT: All right. What other exhibits  
24 do you want for the Court to take up?

25 MR. BRISSETTE: 229F1 in front of you, we

1 would ask that that be admitted in front of the jury for  
2 all purposes.

3 229C1 --

4 THE COURT: Just a moment. Let's deal with  
5 one exhibit at a time.

6 Mr. Cummings, with regard to 229F1, do you  
7 have any objection?

8 MR. CUMMINGS: Your Honor, my -- you have  
9 the only copy of that, and that's fine. My  
10 understanding is that on -- well, let me just look at  
11 it.

12 I have no additional objections to 229F1.  
13 From my review of it, it only address those two  
14 telephone numbers.

15 THE COURT: All right. 229F1 is admitted.  
16 (State's Exhibit No. 229F1 admitted)

17 THE COURT: 229B1?

18 MR. BRISSETTE: Your Honor, that's --

19 THE COURT: Which was -- I was just going  
20 to say is that the -- with the changes that I ordered to  
21 be made, do you have any other additional objections  
22 with regard to 229B1, Mr. Cummings?

23 MR. CUMMINGS: No, Your Honor. We -- we  
24 will persist in objecting as the basis of -- that we've  
25 already made as far as the right to confront the

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1 witness. We do believe it's hearsay, and if you  
2 overrule our objection, we would like to have a limiting  
3 instruction.

4 THE COURT: And I've asked you to prepare  
5 one for the Court.

6 MR. CUMMINGS: I -- I can do that, Judge.

7 THE COURT: All right. Now, 229, as  
8 directed, will be admitted. In the present form it will  
9 not be.

10 MR. BRISSETTE: Yes, Your Honor. The State  
11 intends to call that 229B2 or Bravo 2.

12 THE COURT: With the corrections or the  
13 changes ordered by the Court.

14 MR. BRISSETTE: Yes.

15 THE COURT: Now, with regard to 229C1.

16 MR. CUMMINGS: Those are some text messages  
17 from Joy's phone, Your Honor. I have the same  
18 objections. We start at 10/2/09 with communications  
19 between -- alleged communications between Mrs. Hummel  
20 and John Hummel.

21 There are apparent -- there are phone  
22 numbers that are unidentified so far. I believe there's  
23 (817) 680-1602 that I don't -- I don't have it in my  
24 notes as being identified yet.

25 MR. BRISSETTE: And I think I made the

1 proffer that Mr. Van Der Leest knows that to be a person  
2 by the name of Trish Murphy.

3 Is that correct, Mr. Van Der Leest?

4 THE WITNESS: That is correct, sir.

5 THE COURT: Okay.

6 MR. CUMMINGS: The objections I have are  
7 the same. They go to relevance of the -- of the remote  
8 material as to date from the offense date. In other  
9 words, 10/2/09 is where this record begins, which is  
10 over two and a half months prior to the alleged date of  
11 the offense.

12 There are -- I don't know who this Chris  
13 Murphy is. We haven't got the ability to confront him  
14 and cross-examine him as to the communications that are  
15 contained within here. They're hearsay. We don't have  
16 any knowledge of whether or not these text messages were  
17 done by Joy or that they were done by Clyde having  
18 borrowed her phone or John having borrowed her phone. I  
19 mean, one device to another, we have no evidence as to  
20 who was using the device at that time.

21 THE COURT: All right. With regard to Ms.  
22 Murphy or Mr. Murphy -- I don't know who -- but it's the  
23 number (817) 680-6962. How is that relevant?

24 MR. BRISSETTE: Your Honor, Ms. Murphy is  
25 here and was going to be a witness this afternoon.

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1 Rachel is here this morning. She is the person that  
2 will be identifying the living person as Joy Hummel  
3 before she was murdered.

4 THE COURT: All right. So I'm going to  
5 table that for the time being, based upon the State's  
6 representations.

7 In regard to 229D1 --

8 MR. CUMMINGS: The phone calls -- D1 is  
9 John Hummel's telephone calls, and that's what's  
10 represented in the document. They start at 10/1/09, so  
11 the remoteness objection as far as relevance persists  
12 with this document. These are telephone calls both --  
13 both sent and received or called and answered.

14 THE COURT: State, what's the purpose of  
15 you offering these records?

16 MR. GILL: Well, Your Honor, it's the --  
17 it's the same -- same theory we had for admissibility of  
18 the text messages. It's the contact between he and  
19 Kristie Freeze and -- and the other individuals that  
20 have been identified through testimony.

21 THE COURT: With regard to Ms. --

22 MR. BRISSETTE: Judge, the purple phone  
23 number --

24 THE COURT: Yes.

25 MR. BRISSETTE: -- is being taken out.

1 This was something that the State had planned that we  
2 were supposed to be talking to Defense Counsel this  
3 weekend, and we never heard from Mr. Cummings, or I  
4 would have had this done then. So I'm removing Ms.  
5 Bow's phone number from this, and we're reprinting the  
6 exhibit downstairs.

7 THE COURT: All right. So 229D1 will be  
8 modified to remove Ms. Bow's information.

9 And then finally I have 229E1. State,  
10 what's the purpose of you offering E1, and who does  
11 that -- and (817) 7701-1823, (sic) who is that  
12 associated with?

13 MR. CUMMINGS: John Hummel.

14 THE COURT: Thank you.

15 And this is just to record the time frames  
16 that he answered the phone; is that correct?

17 MR. BRISSETTE: Your Honor, I believe if  
18 we're dealing with Echo 1, that is Ms. -- that is Ms.  
19 Hummel's cell phone records of -- the telephone number  
20 is 1823. Contained in that highlighted in yellow is Mr.  
21 Hummel's.

22 The blue in that record is Chris Paris'.  
23 As we go further on through the record, line 1309 is  
24 identified as Papa John's Pizza, which has been  
25 authenticated by the phone number contained in the bank

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1 records that have been admitted. Lines 1335 and 1336  
2 have been identified as Delaney Elementary School.

3 THE COURT: Mr. Cummings?

4 MR. CUMMINGS: My objection to that  
5 particular exhibit, Your Honor, is based upon a lack of  
6 relevance to the offenses that we are here on trial.

7 THE COURT: Your objection regarding 229E1  
8 is overruled. 229E1 will be admitted.

9 All right. Are there any other exhibits  
10 that we need to discuss at this time?

11 MR. BRISSETTE: Not from the State, Judge.

12 MR. CUMMINGS: One of those was tabled,  
13 correct?

14 THE COURT: That is correct, and that's  
15 with regard to Ms. -- one of the anticipated witnesses  
16 that will be speaking later, and that witness is, once  
17 again?

18 MR. BRISSETTE: Ms. Murphy, Your Honor.

19 THE COURT: Thank you. All right.

20 MR. CUMMINGS: Thank you, Your Honor. I  
21 felt like if we did this now, we'd be more efficient  
22 than --

23 THE COURT: We will see.

24 All right. Are both sides ready for the  
25 jury?

1 MR. BRISSETTE: The State's ready, Your

2 Honor.

3 MR. CUMMINGS: Yes, sir.

4 THE COURT: Let's bring in the jury.

5 (Jury present)

6 THE COURT: You may proceed when you're  
7 ready.

8 MR. BRISSETTE: Your Honor, may the Court  
9 inform the jury as to its ruling on 446, please?

10 THE COURT: Members of the jury, State's  
11 Exhibit 446 is admitted.

12 (State's Exhibit No. 446 admitted)

13 THE COURT: You may proceed.

14 DIRECT EXAMINATION (Cont'd)

15 BY MR. BRISSETTE:

16 Q. Investigator Van Der Leest, before lunch we  
17 started talking about your photographic comparison work.  
18 Exhibit 446, is that contained on your laptop as well?

19 A. It is.

20 MR. BRISSETTE: Your Honor, with the  
21 Court's permission, may we publish 446 using the  
22 projector?

23 THE COURT: You may.

24 Q. (BY MR. BRISSETTE) Mr. Van Der Leest, I know  
25 that it may sound daunting that there's 59 pages in

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1 there, but do they actually -- if we were looking at  
2 this forensically down in the lab, do certain amount of  
3 those slides stack on top of each other as a  
4 transparency, if you want to look at it that way?

5 A. They do.

6 Q. Can you take us -- are they divided into sets  
7 based on your -- how your opinion comes down in this  
8 case?

9 A. They are.

10 Q. Can you go through the first set for us then?

11 A. I can.

12 The two images from the E-Z Mart video,  
13 these were images taken from the video itself. The two  
14 images that are of the uniform shirt that are on the  
15 mannequin, what I'm doing is using the shirts -- the  
16 picture taken with the shirt on the mannequin is my  
17 known. The pictures -- the images taken from the E-Z  
18 Mart are the unknown.

19 I'm comparing class characteristics of the  
20 shirt from the video, the unknown, with class  
21 characteristics of the known, specifically, the name  
22 tag, the badge, the patch that's on the left shoulder  
23 and the epaulets that are up on the shoulders  
24 themselves.

25 Q. Is there a next set of images, sir?

1 A. There is.

2 Q. Can you show those to the jury?

3 A. Again, the image on the left is from the  
4 Burleson Walmart video. The image on the right is a  
5 photograph we took of the shirt that is in evidence, the  
6 front portion of the shirt. And the arrows point to  
7 specific areas of the shirt that are consistent in both  
8 of these images. Again, these are class  
9 characteristics.

10 Q. And that is on slide 14 of 59; is that correct?

11 A. Correct, sir.

12 Q. Is there a next grouping?

13 A. There is.

14 Q. Can you show that to the members of the jury?

15 A. Again, the image on the left is from the  
16 Burleson Walmart. Image on the right is the back of the  
17 shirt. The one on the right is our known; the one on  
18 the left is our unknown. And the arrows are pointing to  
19 areas within both images that are consistent for class  
20 characteristics.

21 Q. And that -- for reference purposes on 446, is  
22 that image 19?

23 A. It is.

24 Q. Is there another grouping, sir?

25 A. There is.

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1 Q. Can you show that to the jury?

2 A. Again, image on the left is from the Burleson  
3 Walmart. Image on the right is the hat that is in  
4 evidence sitting on the mannequin. The lower image is  
5 also from the Burleson Walmart. Again, the arrows point  
6 to the class characteristics of the hat being similar in  
7 both the known and the unknown.

8 Q. That's in 2459, sir?

9 A. Yes, sir.

10 Q. Is there another set?

11 A. There is.

12 Q. Can you show that to the jury?

13 A. The image --

14 Q. You're on 34 of -- 35 of 59; is that correct,  
15 sir?

16 A. Yes, sir. The image on the upper right corner  
17 is a still image taken from the ATM video; the image on  
18 the left top is an image taken from the surveillance  
19 camera video at the Kennedale Police Department; and the  
20 image in the center is our known that was taken here at  
21 the District Attorney's Office.

22 And this slide just represents that you can  
23 see the structure of the emblem in all three, and they  
24 are consistent with the same class characteristics.

25 Q. Is there another set, sir?



1 A. There is.

2 Q. Can you take us to that, please?

3 Image 41 of 59, what are we looking at  
4 here, sir?

5 A. Again we're looking at the hat, more  
6 specifically with the arrows that are -- the two sets of  
7 arrows that are at the top. We're looking at specific  
8 areas of the known, which is the image on the left,  
9 being the -- the dark area that is in the middle of the  
10 gray area of the hat. The bottom arrows simply are  
11 pointing out that this is a -- a dark hat with a light  
12 band around the head.

13 But the top arrows point to specific  
14 locations within that gray image that is on the black  
15 hat that is consistent class characteristics for the  
16 hat.

17 Q. Do you have another set, sir?

18 A. I do.

19 Q. Can you please show that to the jury?

20 A. (Witness complies).

21 Q. 51 of 59, what are we looking at here?

22 A. What we're looking at for our known is the Mac  
23 Tools shirt, and on the right we see an image that was  
24 taken from the Arlington video after Mr. Hummel left the  
25 Kennedale police station.

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1 We're looking at, on the bottom left, the  
2 arrow points to the Mac Tools logo, and on the -- on the  
3 known and on the unknown, you can see what appears to be  
4 a light colored set pixels in the same location within  
5 that shirt.

6 On the right you can see a white set of  
7 pixels on the known, and again on the unknown, the white  
8 pixels are in that same general location. And it's  
9 consistent within the top -- the top two arrows as well  
10 as far as the lettering that makes out the Mac word.  
11 Again, these are class characteristics for this shirt,  
12 known versus unknown.

13 Q. And your final eight, sir? What are we looking  
14 at here, sir, for the first set of arrows?

15 A. Okay. On the left is images that's taken from  
16 the Coast Inn video. On the right is an image taken  
17 from the Kennedale Police Department interview. And in  
18 the middle, again, is our known.

19 And once again, I am using the arrows to  
20 point out the class characteristics that are similar  
21 with all of these images.

22 Q. And slide 59, are there unique class  
23 characteristics you talked about, I think, before lunch?

24 A. There are.

25 Q. Prior to testimony today, did you have a chance

1 to examine Mr. Hummel's right arm?

2 A. I did.

3 Q. What did you observe?

4 A. I observed a tattoo on his right forearm.

5 Q. Directing your attention to the screen in 446,  
6 slide 59, do you have an opinion as to the unique  
7 characteristics that are displayed on the screen?

8 A. Yes.

9 Q. And what is that opinion?

10 A. This -- my opinion is that the tattoo is  
11 consistent throughout all these images in its location,  
12 its shape and its size.

13 Q. With respect to the general class  
14 characteristics you talked about on the first 58 slides,  
15 did you find any inconsistencies throughout all the  
16 videos that you've looked at and testified about today?

17 A. I have found no inconsistencies.

18 Q. Are you familiar in western cultures as to  
19 where gentlemen wear a wedding ring?

20 A. I am.

21 Q. Have you had a chance to review certain videos  
22 in this case to determine whether or not Mr. Hummel had  
23 a wedding ring on at some point?

24 A. I did.

25 Q. Can you please pull one of those images up for

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1 us on the screen?

2 Let me ask it this way, Mr. Van Der Leest:  
3 Can you take us to the video, please?

4 A. I'll have to open it all up. I have a still  
5 image of those.

6 Q. You do? Can you show us the still?

7 A. Not on here.

8 Q. Do you have a hard copy?

9 A. I have hard copies.

10 Q. And you -- that are already admitted into  
11 evidence?

12 A. They have.

13 Q. Can you retrieve one from the witness stand  
14 there?

15 A. (Witness complies).

16 MR. BRISSETTE: Your Honor, may we have the  
17 lights?

18 Q. (BY MR. BRISSETTE) Mr. Van Der Leest, in  
19 State's Exhibit 451 and 456, are you able to determine a  
20 metallic object on Mr. Hummel's left ring finger?

21 A. I am.

22 Q. And in State's 449, what are we looking at  
23 there?

24 A. You're looking at the left hand and no metallic  
25 object.

1 Q. And is that in Oceanside?

2 A. It is.

3 Q. Now, when we talk about looking at individual  
4 frames like these exhibits here, were you able to look  
5 at the video and see if there was any artifacts in those  
6 areas of -- of question?

7 A. I was.

8 Q. What's an artifact, for the jury's benefit?

9 A. An artifact would be something that during the  
10 compression phase of -- of capturing the video, an  
11 artifact would be something where a pixel was -- takes a  
12 color from a surrounding area and puts it there when it  
13 shouldn't be there.

14 Q. Were you able to follow frame by frame of the  
15 Walmart in which Mr. Hummel purchased his boots?

16 A. I was.

17 Q. Were you able to see some class characteristics  
18 of the boots that are now in evidence?

19 A. I was.

20 Q. And by the boots in evidence, I mean the second  
21 sets, the ones he bought on video.

22 A. Yes.

23 Q. Do they have some unique color characteristics  
24 to the sole of the boot?

25 A. They have some class characteristics to the

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1 sole of the boot, yes.

2 Q. And is that a different color than the actual  
3 sole? Is there some insets?

4 A. There is.

5 Q. And what color are the insets?

6 A. Yellow.

7 Q. And could you determine that by your review of  
8 the video as well?

9 A. I could.

10 Q. There's a wallet, I believe, in front of you as  
11 well, Mr. Van Der Leest; is that correct?

12 A. Yes, sir.

13 Q. Do you have an opinion as to if you open the  
14 wallet up now and look at the placement of the credit  
15 card you talked about earlier, were you able to see that  
16 on the transaction at the Arlington Walmart as well?

17 A. I was.

18 Q. Is it consistent with the placement of the card  
19 as it sits in the wallet today?

20 A. It is.

21 Q. Did you notice anything else about the wallet  
22 that caught your eye in review of it?

23 A. I did.

24 Q. What was that?

25 A. Whenever the wallet was opened at the Arlington

1 Walmart, on the left portion of the wallet, you could

2 see to me what appeared to be an image, a photograph of  
3 some type, and that is not in here now.

4 Q. And do you have a still image of that as well?

5 A. I do.

6 Q. And which number is that, sir?

7 A. 459.

8 Q. And so I'm clear, your still image from

9 Oceanside that's listed as 449, you saw no metallic  
10 object consistent with the ring on his left-hand ring  
11 finger, correct?

12 A. That is correct.

13 MR. BRISSETTE: May I approach the witness,  
14 Your Honor?

15 THE COURT: You may.

16 Q. (BY MR. BRISSETTE) With respect to State's  
17 Exhibit 229C1 and 229E1, are you familiar with Ms.  
18 Hummel's -- Mrs. Hummel's cell tower calls or calls and  
19 text messages from her phone as prepared in these two  
20 exhibits?

21 A. I am.

22 Q. Are you familiar with a lady by the name of  
23 Trish Murphy?

24 A. I am.

25 Q. Do you know Trish Murphy's phone number?

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1 A. It is -- not off the top of my head, no.

2 Q. Is (817) 68 --

3 MR. CUMMINGS: Your Honor. I'm going to  
4 object to him leading his witness.

5 THE COURT: Sustained.

6 MR. BRISSETTE: May I show him the exhibit,  
7 Your Honor?

8 THE COURT: You may approach.

9 Q. (BY MR. BRISSETTE) I'm showing you what's been  
10 marked for identification purposes as State's 229C1. Do  
11 you recognize the number highlighted in pink in that  
12 exhibit?

13 A. Yes.

14 Q. And have you spoken to the person who owns that  
15 phone number currently?

16 A. By voicemail.

17 Q. And who does that person purport to be?

18 A. Trish Murphy.

19 MR. BRISSETTE: Your Honor, at this time  
20 based on the rulings outside the court (sic), the State  
21 would conditionally offer 229E1 and 229C1, tender to  
22 Defense.

23 MR. CUMMINGS: Your Honor, I renew my  
24 objections that were made outside the presence of the  
25 jury after the lunch hour. I have no additional

1 objections to the ones I already made.

2 THE COURT: 229E1 and C1 are conditionally  
3 admitted. Your objection is overruled.

(State's Exhibit Nos. 229C1,  
229E1 admitted)

6 THE COURT: You may proceed.

7 Q. (BY MR. BRISSETTE) Thank you, Investigator Van  
8 Der Leest.

9 MR. BRISSETTE: We pass the witness, Your  
10 Honor.

11 THE COURT: Cross-examination?

12 MR. CUMMINGS: May I approach, Your Honor?

13 THE COURT: You may.

14 CROSS-EXAMINATION

15 BY MR. CUMMINGS:

16 Q. In your direct examination with Mr. Brissette,  
17 you were talking about a photograph -- you were  
18 identifying a photograph regarding ring -- a wedding  
19 ring, or whatever. Is that this photograph here?

20 A. No, sir.

21 Q. 459? Would you -- is it 451?

22 A. 451 and 456 have the ring; 449 does not.

23 Q. Did you -- thank you.

24 A. Yes, sir.

25 Q. 449 is taken from a -- it's a captured still

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1 from the video at the Coast Inn, correct?

2 A. Yes, sir.

3 Q. Is that the best quality you have?

4 A. Yes, sir.

5 Q. Did you use any -- in doing your work with the  
6 videos, you have specialized software and specialized  
7 computer equipment to deal with frame by frame and that  
8 sort of thing, correct?

9 A. Yes, sir.

10 Q. As far as enhancing this so that it would be  
11 clearer, whether or not he's wearing a ring or not, does  
12 your software or your equipment do that for you?

13 A. I'm sorry. Could you repeat the question?

14 Q. As far as enhancing the photograph -- I -- I  
15 assume, since you've offered this as an exhibit, this is  
16 the best we get, correct, as far as clarity of this  
17 particular still?

18 A. That's a pretty good image, yes, sir.

19 Q. Okay. Do you say that because you're familiar  
20 with the quality of the source?

21 A. I -- I am, yes, sir.

22 Q. It's certainly not as clear as if I took your  
23 photograph right now with a camera, is it?

24 A. That is correct.

25 Q. All right. So that's all relative, pretty good

1 image.

2 You talked about the wallet that you have  
3 there on the counter next to you. You-all got this out  
4 of John's property, did you not?

5 A. Yes, sir.

6 Q. Now, you indicate that there is a -- a

7 photograph that's visible in -- in the -- in one of the  
8 images that you have offered before this jury, correct?

9 A. Correct.

10 Q. That photograph was -- which -- what context  
11 are we talking about?

12 A. Whenever -- in the image from the Arlington  
13 Walmart, whenever the wallet is opened, on the left side  
14 of the wallet, you can see what appears to be an image  
15 of a picture.

16 Q. There's no photo compartment in this wallet, is  
17 there?

18 A. There is not.

19 Q. Okay. No plastic sleeves in which somebody  
20 could -- could place a photograph if they had one,  
21 correct?

22 A. That is correct.

23 Q. There is no physical evidence to indicate that  
24 there ever was any such item in this particular State's  
25 Exhibit 462, correct?

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1 A. That is correct.

2 Q. You got that out of -- from the Sheriff's  
3 Department?

4 A. Yes, sir.

5 Q. John arrived here in the custody of the  
6 Sheriff's Department December 31st, 2009, is that  
7 correct, or do you know?

8 A. That is correct.

9 Q. John was placed into the custody of the Tarrant  
10 County jail, and his property was put in their  
11 possession -- the Sheriff's Department's possession  
12 until you-all recovered it yesterday, correct?

13 A. Yes, sir.

14 Q. Prior to John coming here, he didn't have the  
15 full ability to control his person nor the things on his  
16 person, did he? He was in custody, wasn't he?

17 A. Yes, sir.

18 Q. I mean, we have seen depicted on this large  
19 screen the fact that one of your partners or one of the  
20 supervisors in your office, Chief Rizy, actually talked  
21 to John while he was in custody on the 20th of December,  
22 2009. At that time he didn't have possession of that  
23 exhibit, did he?

24 A. No, sir.

25 Q. He was in jail clothes when he was talking to

1 those three investigators?

2 A. That is correct.

3 Q. We saw video of John being -- and we heard  
4 testimony from a border patrol officer that John was, in  
5 fact, taken into custody at that point. So from the  
6 point that he was taken into custody by border patrol,  
7 he's been in custody ever since, has he not?

8 A. Yes.

9 Q. He's been transferred from agency to agency,  
10 and the items that one would normally have control over,  
11 such as your wallet, are actually secured for  
12 safekeeping or for whatever purpose by law enforcement  
13 authorities that have that individual in custody,  
14 correct?

15 A. That is correct.

16 Q. The videos that you have put before the jury  
17 today are videos that you went to various locations and  
18 obtained from businesses that nowadays use those videos  
19 all the time, correct?

20 A. Yes.

21 Q. Primarily for security purposes, both internal  
22 and external, correct?

23 A. Yes.

24 Q. As a matter of fact, your office has created  
25 the lab that you and your partner run because of the

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1 prevalence of video in our culture now, correct?

2 A. Yes.

3 Q. But one of the things that you do is you  
4 take -- and in the case of Walmart, what the jury saw is  
5 not what you got when you picked up those tapes, when  
6 you did -- and if you want me to ask that a little  
7 more -- I see your -- your lack of comfort there.

8 Okay. When you picked up those tapes, they  
9 weren't in the edited version the jury saw?

10 A. That is correct.

11 Q. You actually, from Walmart, get a series of  
12 several videotapes that you have edited for them and  
13 combined all into one exhibit?

14 A. That is correct.

15 Q. So each time you went to one of these places,  
16 particularly Walmart, but not just Walmart, E-Z Mart  
17 does the same thing, they have multiple cameras going at  
18 any one time, and when you ask for the evidence from  
19 them, we get perhaps a stream of several cameras or  
20 several videos being played at the same time?

21 A. That is correct.

22 Q. The presentation that you-all have made here is  
23 one that you have, in a sense, created. I mean, they  
24 don't have those circles identifying a particular  
25 individual on their videos that they provided you, do

1 they?

2 A. That is correct, they do not.

3 Q. One of your jobs is to make things to edit, to  
4 make it clearer for the consumer or whatever, to present  
5 your package in the best possible way. All accurate?

6 A. Yes, sir.

7 Q. Your -- I'm sorry. You brought us so many  
8 different things, it takes me a minute.

9 You showed us a graph of tape that came in  
10 through, I think, Mr. Porter, your partner. Mr. Barry's  
11 work?

12 A. Correct.

13 Q. Is that his name, Barry?

14 A. Yes, Barry Dickey.

15 Q. And just to kind of hopefully put an end to  
16 that, you're the one that got Barry Dickey involved,  
17 correct?

18 A. Correct.

19 Q. However, he didn't come here to tell us how he  
20 went about doing what he did. You've attempted or have  
21 done that today or yesterday -- I don't remember  
22 which -- correct?

23 A. I think that's incorrect.

24 Q. Okay. Correct me.

25 A. This, what you're showing now, is a visual

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1 representation of the waveforms from the original file  
2 at the bottom, 220F, and a representation of the  
3 waveform after Mr. Dickey's work of 220D.

4 Q. And this appears to be a very noisy  
5 environment, correct?

6 A. Yes, sir.

7 Q. And, in fact, was why you sent it to Mr.  
8 Dickey, correct?

9 A. Yes, sir.

10 Q. Now, what we got back had some conversation  
11 cleaned up without the diesel noise in the background,  
12 best he could do, right?

13 A. Yes, sir.

14 Q. But, in fact, there is a period that, for  
15 whatever reason, it's just dead space. And the point of  
16 all this is some of it couldn't be cleaned up to the  
17 point where we had conversation. It was just dead air  
18 or whatever; is that fair? Or would you like to say it  
19 in your own words?

20 A. Well, the -- the dead air, I believe we figured  
21 out exactly why that is.

22 Q. There is a very loud engine in the background  
23 and there are two men conversing. We have as much as of  
24 their conversation as could be captured by your expert?

25 A. That is correct.

1 Q. Okay. Whether or not there were additional  
2 conversations, he did what he could to get what he --  
3 what was played for the jury?

4 A. That is correct.

5 Q. Okay. This exhibit that's still up in front of  
6 the jury right now, State's Exhibit 446, correct?

7 A. Yes, sir.

8 Q. You -- you're merely highlighting observations  
9 that you made in your lab by having the actual garment  
10 there and looking for similarities within the videos  
11 that you've presented to this jury, correct?

12 A. Not only similarities but differences as well.  
13 I'm looking for both.

14 Q. But you didn't point out any differences, and  
15 you actually said you didn't find any?

16 A. Correct.

17 Q. Okay. So -- these are observations that you  
18 made and have presented to the jury. I mean, you did it  
19 with your own eyes, you got years of experience as a law  
20 enforcement officer, and the training that you have as  
21 far as video, that had nothing -- that had nothing to do  
22 with the observations you made. You made those  
23 observations with your vision without the benefit of any  
24 measuring devices and have pointed out to the jury those  
25 observations through this exhibit, correct?

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1 A. Correct.

2 Q. Okay. Metadata. That is -- is that the date  
3 that we are seeing at the bottom of some of these  
4 devices -- or some of these exhibits?

5 A. Yes, it's a portion of the metadata.

6 Q. Okay. So define metadata for me?

7 A. Video travels in three streams: Audio, video,  
8 and there's a metadata that goes along with it. It --  
9 it can tell the audio and video how to sync. It can  
10 tell it when to play, when not to play; and it can be  
11 graphically displayed on the screen, as we've seen in  
12 the video with the date and the time or frame rate or  
13 whatever the -- the software engineer wants the metadata  
14 to be.

15 Q. Okay. So it's a lot more than just the date  
16 and time indicated on the screen?

17 A. It can be, yes.

18 Q. Okay. Well, let me talk about just the date  
19 and time that we saw in some of the videos.

20 And you're familiar with all the videos in  
21 this case and even the ones from Unit 47 and Unit 51,  
22 correct?

23 A. I am.

24 Q. The date and time that's indicated on the  
25 bottom of the screen, that's dictated by the recording

1 equipment, true?

2 A. Can be.

3 Q. Okay. I guess what I'm getting at -- and let  
4 me just jump to the -- to what I'm getting at, and you  
5 tell me.

6 For instance, Unit 47, Unit 51, the  
7 evidence before the jury is that, you know, there's a  
8 certain time and date indicated on that VHS tape. Well,  
9 at the very same time that 47's recording, 51 may be  
10 recording, and the date and time indicated on it may be  
11 slightly different?

12 A. That is correct.

13 Q. Okay. So just because we have made -- metadata  
14 doesn't necessarily mean it is a hundred percent  
15 accurate or correlated. One tape is not going to  
16 necessarily translate to another?

17 A. That is correct.

18 Q. The bits of video from California is Pacific  
19 Time, is it not, or do you -- can you assume that?

20 A. I can assume that.

21 Q. Okay. So the point is is that you got to  
22 calibrate these things, and they're not necessarily  
23 synchronized?

24 A. That is correct.

25 Q. Okay. Thank you, sir.

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1 MR. CUMMINGS: I'll pass the witness, Your  
2 Honor.

3 THE COURT: Redirect?

4 MR. BRISSETTE: Your Honor, at this time  
5 the State would tender to Defense Counsel State's 468,  
6 business records affidavit of the jail records from the  
7 San Diego County Jail that have been filed back in  
8 December of 2010 pursuant to the Rules of Evidence. We  
9 offer them for the record only at this point

10 MR. CUMMINGS: Your Honor, we have no  
11 objections to this being offered for the record only at  
12 this point. If it's -- if we go further than that,  
13 we'll have to revisit.

14 THE COURT: State's Exhibit 468 is admitted  
15 for the record only.

16 (State's Exhibit No. 468 admitted)

17 THE COURT: State, you may proceed.

18 MR. BRISSETTE: May I approach the witness,  
19 Your Honor?

20 THE COURT: You may.

21 REDIRECT EXAMINATION

22 BY MR. BRISSETTE:

23 Q. Mr. Van Der Leest, I'm going to direct your  
24 attention to State's 468 to an item and ask you to  
25 compare it to an item that's been marked for



1 identification purposes as State's 469 and see if  
2 they're not one and the same.

3 A. I do see some variances in the two, some  
4 differences in the two.

5 Q. Is the center of 469, does it have some  
6 security features to it to blot out certain areas?

7 A. Yes.

8 Q. Certain areas that -- Social Security number  
9 and other things that -- identification are redacted?

10 A. Yes.

11 Q. Okay. With respect to the bottom of 469, have  
12 you had a chance to compare it to the page in the  
13 records that have been admitted for the record only?

14 A. I have.

15 Q. And do you see an area where it indicates  
16 whether or not there's a ring present as part of the  
17 property?

18 MR. MOORE: Objection, calls for a hearsay  
19 response; testifying from a document that's not in  
20 evidence.

21 MR. BRISSETTE: Judge, I'll be happy to  
22 rephrase.

23 THE COURT: Sustained. First off, I'll  
24 sustain the objection. Rephrase.

25 Q. (BY MR. BRISSETTE) Without going into the

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1 answer, is there a section on the property sheet to note  
2 whether or not an individual presents with any rings?

3 A. Yes.

4 Q. Is there a section on the sheet to know if an  
5 individual presents with any watches?

6 A. Yes.

7 Q. Is there a section on the sheet that -- to show  
8 if an individual presents with any -- any United States  
9 currency?

10 A. Yes.

11 Q. And is there a section for the individual  
12 that's being booked into a facility to sign their name?

13 A. Yes.

14 Q. Do you see a signature of an individual on 469?

15 A. No.

16 Q. Do you see it on 468 in the records?

17 A. Yes.

18 Q. And both -- without going into -- is there an  
19 indication whether or not there's a ring?

20 MR. MOORE: Objection. It's calling for  
21 him to testify from a document that's not in evidence.  
22 It would be an answer based on hearsay.

23 THE COURT: Sustained.

24 Q. (BY MR. BRISSETTE) Did you retrieve 469 as  
25 part of your subpoena request to the Sheriff's

1 Department?

2 A. Yes.

3 Q. Was it in the sealed bag with the wallet, the  
4 keys and the boot laces to the boots that have been  
5 admitted into evidence?

6 A. The bag was not sealed whenever I retrieved it.

7 Q. Does it have an individual's name at the top?

8 A. It does.

9 Q. And who? And you recognize that individual's  
10 name?

11 A. I do.

12 Q. Does it have a date of birth that you're  
13 familiar with?

14 A. Yes.

15 MR. BRISSETTE: We'd offer 469 at this  
16 time, Your Honor, for the record only.

17 MR. CUMMINGS: Your Honor, again, it's for  
18 the record only. We have no objections to coming into  
19 the record. We don't want to waive any objections we've  
20 made prior in the pretrial --

21 THE REPORTER: I couldn't hear the last  
22 part.

23 MR. CUMMINGS: We don't intend to waive any  
24 objections we made at pretrial, but since it's being  
25 offered for the record only, we have no objection to it

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1 being put into the record.

2 THE COURT: All right. State's Exhibit 469  
3 for the record only is admitted. May I see it?

4 (State's Exhibit No. 469 admitted)

5 THE COURT: You may proceed.

6 MR. BRISSETTE: Your Honor, I don't know if  
7 this has been offered in front of the jury in its  
8 current state. The State would offer 229F1 for all  
9 purposes, tender to Defense.

10 MR. CUMMINGS: Your Honor, I've seen it.  
11 It's the one we dealt with at the pretrial hearing, and  
12 I believe that I have no additional objections to 229F1.

13 THE COURT: All right. 229F1 is admitted.  
14 Your objection is overruled as dealt with during the  
15 pretrial.

16 (State's Exhibit No. 229F1 admitted)

17 Q. (BY MR. BRISSETTE) Investigator Van Der Leest,  
18 in 229F1, there are several colors of -- of highlight in  
19 that document, are there not?

20 A. There are.

21 Q. Do you see a phone number highlighted in  
22 yellow?

23 A. I do.

24 Q. And can you tell us the name associated to that  
25 as listed in the MetroPCS document?

1 A. Joy Hummel.  
 2 Q. Is there a number highlighted in green?  
 3 A. There is.  
 4 Q. And who is that number associated to?  
 5 A. Joy Hummel.  
 6 Q. Is there a billing address?  
 7 A. There is.  
 8 Q. What is the billing address?  
 9 A. 600 Little School Road, Kennedale, Texas  
 10 76060-5408.  
 11 Q. In your course of your investigation, have you  
 12 come to know the -- who is assigned to the number in  
 13 yellow in the Hummel family, or do you need the other  
 14 exhibits to link that up?  
 15 A. Yes, please.  
 16 Q. Let's go with the -- the number highlighted in  
 17 red.  
 18 A. Okay.  
 19 Q. Have you come to know that phone number?  
 20 A. I have.  
 21 Q. And whose phone number is that listed in 29 --  
 22 229F 1?  
 23 A. Kristie Freeze.  
 24 Q. Thank you.  
 25 MR. BRISSETTE: Pass the witness.

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1 THE COURT: Cross-examination?  
 2 MR. CUMMINGS: We have nothing further for  
 3 Mr. Van Der Leest.  
 4 THE COURT: All right. May he be finally  
 5 excused?  
 6 MR. MOORE: Subject to recall, but he can  
 7 be excused.  
 8 THE COURT: All right. Mr. Van Der Leest,  
 9 you know the rules. Don't talk about your testimony  
 10 with anybody other than the lawyers or discuss it with  
 11 any other witnesses.  
 12 THE WITNESS: Yes, sir.  
 13 THE COURT: You may step down. Thank you,  
 14 sir.  
 15 (Witness retires)  
 16 THE COURT: State, call your next witness.  
 17 MR. GILL: We call Kristie Freeze.  
 18 THE COURT: Kristie Freeze.  
 19 (Witness enters courtroom)  
 20 THE COURT: Ms. Freeze, would you please  
 21 come up?  
 22 Ms. Freeze, would you raise your right  
 23 hand?  
 24 (Witness sworn)  
 25 THE COURT: Please be seated, ma'am.

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1 Please pull the microphone to you.  
 2 State, you may proceed when you're ready.  
 3 KRISTIE FREEZE,  
 4 having been first duly sworn, testified as follows:  
 5 DIRECT EXAMINATION  
 6 BY MR. GILL:  
 7 Q. Would you tell the jury your name, please?  
 8 A. Kristie Freeze.  
 9 Q. And, Ms. Freeze, are you currently employed?  
 10 A. Yes, sir.  
 11 Q. And what city do you work in?  
 12 A. Cleburne.  
 13 Q. What city do you live in?  
 14 A. Joshua.  
 15 Q. How long have you lived in Joshua?  
 16 A. Since I was 16.  
 17 Q. And approximately how old are you now?  
 18 A. 27.  
 19 Q. So you've been living in Joshua for  
 20 approximately 11 years?  
 21 A. Yes, sir.  
 22 Q. Do you have children?  
 23 A. One.  
 24 Q. And is that a male child or female child?  
 25 A. Female.

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1 Q. And how old is she?  
 2 A. She's seven.  
 3 Q. Would you do me a favor? Would you spell your  
 4 name for the record, please?  
 5 A. K-r-i-s-t-i-e, F-r-e-e-z-e.  
 6 Q. Before being employed at your current job, how  
 7 were you employed?  
 8 A. At E-Z Mart.  
 9 Q. What is E-Z Mart?  
 10 A. It's a convenience store.  
 11 Q. And where is that E-Z Mart convenience store  
 12 located?  
 13 A. In Joshua.  
 14 Q. And is it located on a -- on a major street or  
 15 road in Joshua?  
 16 A. 174.  
 17 Q. And where is Joshua in relation to Fort Worth?  
 18 A. About 20 minutes south.  
 19 Q. Is it between Burleson and Cleburne?  
 20 A. Yes.  
 21 Q. Is there a restaurant in Joshua, Texas, by the  
 22 name of Huddle House?  
 23 A. Yes.  
 24 Q. And where is Huddle House located in relation  
 25 to the E-Z Mart where you're employed?

1 A. Further south.  
 2 Q. Approximately how far?  
 3 A. About a mile.  
 4 Q. And you said you also lived in Joshua for about  
 5 11 years. Have you lived in an apartment complex in  
 6 Joshua?  
 7 A. Yes, I do.  
 8 Q. In December of 2009, were you living in an  
 9 apartment complex in Joshua?  
 10 A. Yes.  
 11 Q. And approximately where in Joshua is that  
 12 apartment complex located?  
 13 A. 540 North Main Street.  
 14 Q. Where is it in relation to the Huddle House?  
 15 A. Right behind it.  
 16 Q. So it's located very close to the Huddle House?  
 17 A. Yes.  
 18 Q. Is Main Street the same thing as Highway 174?  
 19 A. No, it branches off.  
 20 Q. So they -- so where you live, are they parallel  
 21 to each other?  
 22 A. Yes.  
 23 Q. And that Huddle House is located on 174; is  
 24 that right?  
 25 A. Yes.

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1 Q. And were you employed at the -- how long were  
 2 you employed at the E-Z Mart?  
 3 A. For about a year and a half.  
 4 Q. Would that have included the time period of the  
 5 fall of 2009?  
 6 A. Yes.  
 7 Q. Were you employed at the E-Z Mart in December  
 8 of 2009?  
 9 A. Yes.  
 10 Q. Did the E-Z Mart have a store number?  
 11 A. I don't remember it.  
 12 Q. It did have a store number, though, didn't it?  
 13 A. Yes.  
 14 Q. But you don't remember what the store number  
 15 was?  
 16 A. Yes.  
 17 Q. Now, while you were employed by the E-Z Mart,  
 18 what were your job duties?  
 19 A. Same as a regular cashier, stock, clean, take  
 20 care of customers, place orders for inventory.  
 21 Q. So basically, were you a clerk in a convenience  
 22 store for the -- for the E-Z Mart folks?  
 23 A. Yes.  
 24 Q. And while you were working at the E-Z Mart  
 25 located in Joshua, did you happen to meet an individual

1 that you came to know as John Hummel?  
 2 A. Yes.  
 3 Q. Do you see that individual in the courtroom  
 4 today?  
 5 A. Yes.  
 6 Q. Would you please point to him and describe what  
 7 he's wearing today?  
 8 A. A suit.  
 9 Q. Is he the last individual at the table over  
 10 here to my left?  
 11 A. Yes.  
 12 MR. GILL: Can the record reflect she's  
 13 identified the Defendant?  
 14 THE COURT: The record will so reflect.  
 15 Q. (BY MR. GILL) And how did you meet Mr. John  
 16 Hummel?  
 17 A. He came into the store.  
 18 Q. He was a customer at your store?  
 19 A. Yes.  
 20 Q. And approximately when would it have been that  
 21 you first met Mr. Hummel at your store?  
 22 A. Late 2009.  
 23 Q. Was he a frequent customer at the store?  
 24 A. He hadn't been before I met him.  
 25 Q. Okay. After you met him, did he become a

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1 frequent customer at the store?  
 2 A. Yes.  
 3 Q. What type of items would he purchase at the  
 4 store?  
 5 A. Cigarettes and gas.  
 6 Q. Approximately how often did he come into the  
 7 store?  
 8 A. Every day after.  
 9 Q. After -- after you met him, he started coming  
 10 into the store every day?  
 11 A. Yes.  
 12 Q. Did you happen to have conversations with him?  
 13 A. Yes.  
 14 Q. And what did y'all talk about at that time?  
 15 A. Anything and everything.  
 16 Q. When he came to your store, would he be clothed  
 17 in any particular way?  
 18 A. He would wear his uniform.  
 19 Q. What type of uniform would that be?  
 20 A. His security uniform, light blue shirt, black  
 21 slacks, black shoes.  
 22 Q. Did you happen to discuss his employment with  
 23 him?  
 24 A. Yes.  
 25 Q. Did he tell you where he was employed?

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1 A. Yes.

2 Q. What did he tell you?

3 A. Walls.

4 Q. Do you understand what Walls is?

5 A. Walls is a hospital in Cleburne.

6 Q. Did he describe what his duties were at the --  
7 at the hospital?

8 A. Security officer.

9 Q. Did he describe to you what his -- his working  
10 hours were?

11 A. I believe so, but I couldn't tell you what  
12 times they were.

13 Q. So generally when you would see him,  
14 approximately what time of the day or night would it be  
15 when he would stop in your store?

16 A. Evening and then early in the morning.

17 Q. When you would see him in the evening, would he  
18 be on his way to work or on his way home from work?

19 A. To work.

20 Q. When you'd see him in the morning, would he be  
21 on his way home from work then?

22 A. Yes.

23 Q. What else did you discuss with Mr. Hummel back  
24 in the -- in the fall of 2009, just generally?

25 A. Can't name any specifics.

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1 Q. All right. Well, did you discuss family with  
2 him?

3 A. Yes.

4 Q. Did you discuss -- did he discuss his family?

5 A. Yes.

6 Q. What did you discuss -- understand his family  
7 to include?

8 A. His wife, his daughter and his father-in-law.

9 Q. Did you explain to him that you had a family?

10 A. Yes.

11 Q. Did you tell him about your daughter?

12 A. Yes.

13 Q. Were you married at the time?

14 A. Yes.

15 Q. And were you undergoing any particular type of  
16 change with regard to your life at that time?

17 A. I was going through a divorce.

18 Q. Now, after -- after talking to him on several  
19 occasions, did he ask for your phone number?

20 A. Yes.

21 Q. Approximately how many occasions did you visit  
22 with him before he asked for your phone number?

23 A. 15, 20.

24 Q. Did you give him your phone number?

25 A. Yes.

1 Q. Shortly after you gave him your phone number,  
2 did he begin telephoning you?

3 A. Yes.

4 Q. Did he also text message you?

5 A. Yes.

6 Q. Throughout the fall of 2009, let's say from  
7 October through December of 2009, did he call you on a  
8 frequent or infrequent basis?

9 A. Frequent.

10 Q. And what do you mean when you say "frequent"?

11 A. Daily.

12 Q. Approximately -- I'm sorry?

13 A. Daily.

14 Q. Would he sometimes call you multiple times each  
15 day?

16 A. Yes.

17 Q. Would sometimes those phone calls be in the 15,  
18 20, 30 telephone calls per day range?

19 A. There's only one occasion that I know of him  
20 calling me repeatedly like that.

21 Q. When would that be?

22 A. December 16th.

23 Q. How about the text messages?

24 A. They were constant.

25 Q. Okay. And they were constant from the time he

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1 first began texting you?

2 A. Yes.

3 Q. So just -- just on a general basis -- in fact,  
4 did you have the occasion to go through an exhibit this  
5 morning which listed in detail the text messages between  
6 you and Mr. Hummel?

7 A. Yes.

8 Q. So approximately how many times on a given day  
9 was Mr. Hummel text messaging you?

10 A. It depended. If -- if I responded, it could be  
11 a lot. If I didn't respond, it was only a few.

12 Q. But needless to say, throughout the fall -- the  
13 November and December of 2009, were there literally  
14 hundreds of text messages exchanged between you and Mr.  
15 Hummel?

16 A. Yes.

17 Q. And were there dozens of phone calls, telephone  
18 calls exchanged between you and Mr. Hummel?

19 A. Yes.

20 Q. Were some of those phone calls brief phone  
21 calls?

22 A. Yes.

23 Q. And were some of those phone calls relatively  
24 lengthy phone calls?

25 A. Yes.

1 Q. By their nature, text messages -- messages are  
2 generally rather brief; is that correct?

3 A. Yes.

4 Q. And was that the -- was the tendency with you  
5 and Mr. Hummel to exchange brief text messages back and  
6 forth?

7 A. Yes.

8 Q. In the document you looked at today, did you  
9 recognize the content of the -- of the text message  
10 conversations between you and Mr. Hummel?

11 A. Yes.

12 Q. And did that document accurately reflect those  
13 text message conversations?

14 A. Yes.

15 Q. What kind of vehicle did Mr. Hummel drive back  
16 in the fall of 2009?

17 A. A purple van.

18 Q. Is that what he was -- would drive when you saw  
19 him at the E-Z Mart convenience store?

20 A. Yes.

21 Q. You mentioned that he purchased gas and  
22 cigarettes there. Do you-all have a -- have a  
23 pay-at-the-pump system at that E-Z Mart?

24 A. No.

25 Q. So if an individual purchases something,

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1 gasoline or anything else, would they have to pay for  
2 that item inside the store?

3 A. Yes, they would.

4 Q. Would they actually have to produce payment to  
5 you as the -- as the clerk of the store?

6 A. Yes.

7 Q. How did Mr. Hummel pay for his purchases?

8 A. A bank card. I don't know if it's debit or  
9 credit.

10 Q. But he gave you some type of -- some type of  
11 plastic --

12 A. Yes.

13 Q. -- to pay for his purchases; is that right?

14 A. Yes.

15 Q. Did Mr. Hummel like to wear cologne?

16 A. Yes.

17 Q. What kind of cologne did he like to wear?

18 A. Axe.

19 Q. Any particular variety?

20 A. I really can't remember.

21 Q. It was an Axe brand? That's a brand of  
22 cologne?

23 A. Yes.

24 Q. When you would see him at the E-Z Mart, did you  
25 all stay inside and have your conversations, or did some

1 of those conversations take place outside?

2 A. Some were inside; some were outside.

3 Q. Generally if you were outside talking, what  
4 were y'all doing out there?

5 A. Smoking.

6 Q. Was Mr. Hummel talkative with you during these  
7 visits?

8 A. Yes.

9 Q. After a period of time, did you and Mr. Hummel  
10 form a -- a friendship?

11 A. Yes.

12 Q. Did he try to take the friendship further?

13 A. Yes.

14 Q. How did he attempt to do that?

15 A. He basically wanted to have sex.

16 Q. And was he -- was he persistent about that?

17 A. Pretty much, yes.

18 Q. Did there -- did there ever come a time when  
19 that took place?

20 A. Yes.

21 Q. And how -- explain to me how that happened,  
22 please. What -- what was the situation in your life at  
23 that point?

24 A. I was under a lot of stress. Like I said, I  
25 was going through a divorce, worried about losing my

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1 daughter, my boyfriend and I were arguing.

2 Q. And was -- it was on that occasion that the --  
3 the sex with Mr. Hummel took place?

4 A. Yes.

5 Q. Was that a -- a one-time thing?

6 A. Yes.

7 Q. Do you know approximately when that took place?

8 A. Based on the text messages that I read this  
9 morning, it was December 10th.

10 Q. Of 2009?

11 A. Yes.

12 Q. Now, after -- after that particular event took  
13 place, did you learn something else from Mr. Hummel that  
14 caused you a great deal of discomfort with him and your  
15 relationship?

16 A. Yes.

17 Q. What was that?

18 A. I found out his wife was pregnant.

19 Q. And why did that cause you discomfort?

20 A. Because he had no concern for the safety of his  
21 unborn child.

22 Q. And what -- what steps, if any, did you take  
23 with regard to that information when you received it?

24 A. I told him not to talk to me, not to text me  
25 anymore.

1 Q. Approximately when in time was it that you  
 2 learned that his wife was pregnant?  
 3 A. I would say a day or two after having sex.  
 4 Q. Did you learn it from him?  
 5 A. Yes.  
 6 Q. Did you learn it from him talking on the phone  
 7 or through a text message?  
 8 A. On the phone.  
 9 Q. Did you and he exchange text messages regarding  
 10 you finding out that his wife was pregnant?  
 11 A. Yes.  
 12 Q. And in those text messages, did you tell him  
 13 basically to leave you alone?  
 14 A. Yes.  
 15 Q. Even previous to that, had you informed him  
 16 about the -- about the state of your relationship with  
 17 him?  
 18 A. Yes.  
 19 Q. What had you told him?  
 20 A. We were friends, that he was married, that I  
 21 had a boyfriend and it wouldn't be anything more.  
 22 Q. Did he seem to understand that?  
 23 A. Yes.  
 24 Q. Was that -- had that been your position  
 25 basically throughout the relationship?

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1 A. Yes.  
 2 Q. After you had the discussion with him about his  
 3 wife being pregnant and you informed him that you  
 4 just -- for him to leave you alone, did he persist in  
 5 trying to reach you, in trying to converse with you  
 6 and -- and persist in text messaging you?  
 7 A. Yes.  
 8 Q. Did he persist in telephoning you?  
 9 A. I believe so.  
 10 Q. At that point was there something -- an event  
 11 occurring in your life? You said you -- you and he had  
 12 the one-time sex on December 10th, and a couple days  
 13 after that is when you found out that his wife was  
 14 pregnant and you attempted to break off your  
 15 relationship with him. Was something else happening in  
 16 your life at that point?  
 17 A. Be specific.  
 18 Q. The divorce?  
 19 A. Yes.  
 20 Q. Okay. Did you have a divorce hearing in  
 21 December of 2009?  
 22 A. Yes.  
 23 Q. What date was that on?  
 24 A. December 16th.  
 25 Q. Had you informed Mr. Hummel that you had a

1 court date set for your divorce on December 16th?  
 2 A. Yes.  
 3 Q. So did he know about that before December 16th?  
 4 A. Yes.  
 5 Q. And did you and he exchange text messages with  
 6 regard to your upcoming divorce hearing?  
 7 A. Yes.  
 8 Q. In fact, did you exchange text messages with  
 9 him on December 16th with regard to your upcoming court  
 10 hearing?  
 11 A. Yes.  
 12 Q. Did you exchange text messages before your  
 13 hearing?  
 14 A. Yes.  
 15 Q. Did you exchange messages after your hearing?  
 16 A. Yes.  
 17 Q. Did he inquire of you the result of your  
 18 hearing?  
 19 A. I let him know that I won.  
 20 Q. All right. And what did you let him know?  
 21 A. That I won, that my daughter would be staying  
 22 with me, and it was over.  
 23 Q. Did you inform him that -- that your divorce  
 24 had, in fact, been granted?  
 25 A. Yes.

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1 Q. So your divorce was final on what date?  
 2 A. December 16th.  
 3 Q. Of 2009?  
 4 A. Yes.  
 5 Q. Did you inform Mr. Hummel that you had some  
 6 plans that day?  
 7 A. Yes.  
 8 Q. And what plans did you inform him that you had?  
 9 A. I was supposed to have a divorce party.  
 10 Q. Were you supposed to have a divorce party?  
 11 A. I told him that I was going to have one.  
 12 Q. So -- so there really was not a divorce party?  
 13 A. No. I didn't feel like having it.  
 14 Q. But you informed Mr. Hummel that there was a  
 15 divorce party?  
 16 A. Yes.  
 17 Q. Why did you do that?  
 18 A. Because I wanted to be left alone.  
 19 Q. Did it succeed?  
 20 A. No.  
 21 Q. Why not?  
 22 A. Because he kept calling me and texting me.  
 23 Q. Okay. You referred earlier in your testimony  
 24 to there being one day where he really persistently  
 25 telephoned you.

1 A. Yes.

2 Q. Is that the date?

3 A. Yes.

4 Q. Do you remember approximately how many times he  
5 telephoned you that day?

6 A. No.

7 Q. But it was numerous?

8 A. Yes.

9 Q. At some point did you finally respond to one of  
10 his -- did he also text message you numerous times that  
11 day?

12 A. Yes.

13 Q. And at one point did you finally respond to one  
14 of his text messages or one of his telephone calls?

15 A. Yes.

16 Q. And what did you inform him?

17 A. That I had been asleep.

18 Q. And did he -- did he persist in attempting to  
19 contact you?

20 A. Yes.

21 Q. And did you carry on -- after that point, did  
22 you carry on a text message conversation with him?

23 A. Yes.

24 Q. Now, December 17th, is that a significant day  
25 in your life also?

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1 A. Yes, it is.

2 Q. What -- what is significant about December  
3 17th?

4 A. It's my daughter's birthday.

5 Q. So how old would your daughter have been on  
6 December 16 -- December 17th of 2009?

7 A. Six.

8 Q. So that was her sixth birthday; is that  
9 correct?

10 A. Yes.

11 Q. Did Mr. Hummel attempt to converse with you or  
12 did he text you on that particular day?

13 A. Yes.

14 Q. What was the subject of his text messages on  
15 that day?

16 A. Tell Kylie (phonetic) happy birthday. He  
17 wanted to come over, wanted to know what I was cooking,  
18 let me know what he was cooking.

19 Q. So before December 17th of 2009, had he met  
20 your daughter?

21 A. I don't know. I don't think so, but I can't  
22 say positively.

23 Q. Is it possible that he had?

24 A. It's possible.

25 Q. Okay. Did he seem -- did he seem to care that

1 it was her birthday that day?

2 A. Yeah.

3 Q. Did he tell you anything and give you a message  
4 that he wanted you to relay to her?

5 A. Tell her he said happy birthday.

6 Q. Did he persist in trying to get together with  
7 you that day?

8 A. Yes.

9 Q. Were you giving him any information back about  
10 that as a possible plan for the two of you?

11 A. I let him know that Kylie would be there. He  
12 said that's okay, so I said okay.

13 Q. So was -- so it was all right with him to visit  
14 with your daughter there? You felt like -- like that  
15 was okay?

16 A. Yes.

17 Q. Were you attempting to have a -- have a  
18 friendly relationship with him at this point?

19 A. I was trying to be friends, not anything more,  
20 and he understood that it wasn't going to be anything  
21 more.

22 Q. So on December 17th of -- of 2009, did he come  
23 to your apartment to visit you?

24 A. Yes.

25 Q. Do you remember approximately what time of day

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1 or night it was?

2 A. It was -- it was at night.

3 Q. And -- in the evening?

4 A. Yes.

5 Q. After dark sometime?

6 A. I believe so.

7 Q. Okay. And what were you doing at home at that  
8 time?

9 A. I really couldn't tell you.

10 Q. Well, let me ask you this: Did -- it was your  
11 daughter's birthday. Did you do anything special for  
12 her birthday?

13 A. I cooked for her.

14 Q. What did you cook?

15 A. Spaghetti.

16 Q. And why spaghetti?

17 A. Because that's her favorite meal.

18 Q. Was there anything in particular about the  
19 spaghetti that you recall?

20 A. I forgot the mushrooms.

21 Q. Why is that -- why is that significant?

22 A. Because she loves mushrooms, and she gave me a  
23 hard time about it.

24 Q. Okay. It was her birthday, the mushrooms were  
25 her favorite, and you forgot them?

1 A. Yeah.

2 Q. This was -- this was -- this was not the -- the  
3 way you wanted things to be; is that right?

4 A. No.

5 Q. Do you remember seeing a conversation about  
6 that in your text messages back and forth with Mr.  
7 Hummel on that day?

8 A. Yes.

9 Q. Was he -- was he concerned about what you were  
10 cooking your daughter for -- for her birthday dinner?

11 A. Yes.

12 Q. When he showed up at your house that night, was  
13 your daughter there?

14 A. Yes.

15 Q. Did Mr. Hummel come in and -- and visit with  
16 you and your daughter?

17 A. Yes.

18 Q. Do you remember approximately how long he  
19 stayed?

20 A. About 30 minutes, same as always.

21 Q. I take it he -- he visited you at your house  
22 on -- on several other occasions?

23 A. Yes.

24 Q. And he generally stayed about 30 minutes. Is  
25 that what I understand from your testimony?

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1 A. Yes.

2 Q. And at some point, I take it, he left?

3 A. Yes.

4 Q. Was he in uniform that night or -- or not?

5 A. Yes.

6 Q. Now, after he left your house that night on  
7 December 17th of 2009, have you ever heard from Mr.  
8 Hummel again in person?

9 A. No.

10 Q. Did you ever receive another text message from  
11 him?

12 A. No.

13 Q. Did he ever attempt to contact you by telephone  
14 in any fashion?

15 A. Nope.

16 Q. Have you attempted to contact Mr. Hummel at any  
17 point?

18 A. Yes. I sent him a -- a message on the 19th  
19 saying, Hey.

20 Q. On December 19th?

21 A. Yes.

22 Q. And what did that message say?

23 A. Hey, H-e-y.

24 Q. Is that all it said?

25 A. That's it.

1 Q. What was the purpose of sending that -- that  
2 text message?

3 A. I hadn't heard from him.

4 Q. At that point had you heard anything about the  
5 events that had transpired at his house around midnight  
6 on December the 18th of 2009?

7 A. No.

8 Q. When did you learn about what had happened at  
9 his house that night?

10 A. Sometime after that I saw it on the news.

11 Q. Let me ask you about -- about the text message  
12 you sent him on the 19th. You sent him a message that  
13 said, Hey?

14 A. Uh-huh.

15 Q. Did he text message you back in response to  
16 that?

17 A. No.

18 Q. So you heard about the -- the fire at his home  
19 on the news?

20 A. Yes.

21 Q. And what was your reaction to that?

22 A. I was shocked.

23 Q. At some point after that, did you hear that  
24 the -- the allegation he had been involved in -- in the  
25 murder of his family?

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1 A. I did not know that he was involved until  
2 Miles, the D.A., showed up at my house.

3 Q. So you had -- so you hadn't heard anything  
4 about it on the news or -- or by any other means?

5 A. I heard there was a fire.

6 Q. Okay.

7 A. And that they died.

8 Q. But you hadn't heard anything beyond that?

9 A. No.

10 Q. And your next contact was with a member of the  
11 Tarrant County D.A.'s Office; is that right?

12 A. Yes.

13 Q. And at some point did you -- were you called to  
14 testify as a witness in front of the Tarrant County  
15 Grand Jury?

16 A. Yes.

17 Q. And on the day you testified, whenever that  
18 might have been, did you have the benefit of having your  
19 text messages to be able to read and refer back to?

20 A. No, I did not.

21 Q. The text message that I referred to, the ones  
22 between you and Mr. Hummel.

23 A. I did not have those.

24 Q. Those -- those were not shown to you until  
25 sometime later; is that correct?



1 A. Yes.  
2 Q. Sometime after your Grand Jury appearance?  
3 A. Yes.  
4 Q. Did Mr. Hummel ever discuss with you the fact  
5 that he wanted to leave his wife?  
6 A. He said that he wasn't in love with her, but  
7 he -- he didn't say that he was going to leave.  
8 Q. Is that something that you wanted him to do,  
9 leave his wife?  
10 A. No.  
11 Q. From your point of view, was there any -- any  
12 future in your relationship with him?  
13 A. No.  
14 Q. Did you explain that to him?  
15 A. Repeatedly.  
16 Q. What was his reaction to that?  
17 A. He kept saying he would take what he could get.  
18 Q. At some point were you contacted by an  
19 individual by the name of Chris?  
20 A. Yes.  
21 Q. And did you understand Chris to be a friend of  
22 Mr. John Hummel?  
23 A. Yes.  
24 Q. And what was it that -- that Chris wanted you  
25 to do or was asking from you?

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1 A. He -- he said that John asked him to call me  
2 and ask me if I wanted his information so I could write  
3 him.  
4 Q. And what was your response to that?  
5 A. I told him no.  
6 Q. Why is that?  
7 A. Because it was his fault that the D.A. was at  
8 my house and I had to go downtown and answer questions  
9 and that I'm sitting right here now. I was upset about  
10 the whole situation.  
11 Q. So you're not -- you're not very happy about  
12 having to be here today?  
13 A. No, I'm not.  
14 Q. Are you concerned about your -- about the  
15 situation with -- with the custody of your daughter? Is  
16 that a concern to you?  
17 A. No.  
18 Q. Ms. Freeze, I'm going to show you what's been  
19 marked as 229B1 and ask you if you have ever had a  
20 chance to -- to look through this particular document?  
21 A. Yes, I have.  
22 Q. Okay. Is that something that you looked  
23 through today?  
24 A. Yes.  
25 Q. And how do you recognize it?

1 A. My signature is on it.  
2 Q. Okay. I asked you to look through that, and  
3 then if you recognize the contents of it, to put your  
4 initials or to sign that document; is that correct?  
5 A. Yes.  
6 Q. And you did so?  
7 A. Yes.  
8 Q. And is 229B1 a -- a printout of the text  
9 messages that were exchanged between you and Mr. John  
10 Hummel?  
11 A. Yes.  
12 Q. And is it an accurate rendition of the text  
13 messages that were exchanged between you and Mr. Hummel?  
14 A. Yes.  
15 Q. And does it accurately show the text  
16 conversations that you had with Mr. Hummel beginning  
17 in -- I think it was October of 2009; is that right?  
18 I'm sorry. It's November of 2009.  
19 A. Yes.  
20 Q. And those text messages continue up to and  
21 including December 17th of 2009?  
22 A. Yes.  
23 Q. And then there's one additional text message  
24 from you to Mr. Hummel on December 19th where you asked  
25 him or told him, Hey?

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1 A. Yes.  
2 Q. And it's an accurate rendition of those text  
3 conversations?  
4 A. Yes.  
5 Q. Okay. I'm going to show you now State's 229B2,  
6 which I can represent to you is -- if you want to take  
7 just a second to look through it and see if it also  
8 contains those same text messages that you examined  
9 earlier today?  
10 A. It appears to be the same.  
11 Q. Okay. And within that exhibit, which is 229B2,  
12 is your telephone number highlighted with the color red?  
13 A. Yes.  
14 Q. And is Mr. Hummel's telephone number  
15 highlighted with the color yellow?  
16 A. Yes.  
17 MR. BRISSETTE: Your Honor, at this point  
18 we're going to offer 229B2 for all purposes.  
19 MR. MOORE: May I ask her a question or two  
20 on voir dire regarding these exhibits, Judge?  
21 THE COURT: You may.  
22 VOIR DIRE EXAMINATION  
23 BY MR. MOORE:  
24 Q. Ms. Freeze, let me show you what's been marked  
25 for identification purposes as State's Exhibit No.



1 229B2. The text messages that were between you and John  
2 are the ones that are highlighted in red and yellow; is  
3 that correct?

4 A. Yes.

5 Q. And those are the ones you recognize?

6 A. Yes.

7 Q. The ones that are -- are in green here, do you  
8 recognize any of those messages?

9 A. No.

10 Q. And later on, there's some back here that are  
11 in blue. Do you recognize any of those messages?

12 A. No.

13 Q. So just -- it's the ones in -- in red and  
14 yellow that you've reviewed and that you look at and  
15 that you recognize as being communication between you  
16 and John; is that correct?

17 A. Yes.

18 Q. As far as the others in there, you don't really  
19 know anything about the -- the truth or veracity of  
20 those text messages; is that correct?

21 A. No.

22 Q. Okay. Thank you.

23 MR. MOORE: Judge, I --

24 THE COURT: Let me visit with the attorneys  
25 on the side.

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1 (BENCH CONFERENCE PROCEEDINGS)

2 MR. MOORE: I don't have any additional  
3 objections to that exhibit other than the ones we  
4 previously made, some of which have been cured by her  
5 testimony.

6 I do object to the -- the text messages  
7 that have not been testified to, the ones that are  
8 marked by blue.

9 THE COURT: Okay. Now, the green is Joy  
10 Hummel, correct?

11 MR. GILL: That's right.

12 THE COURT: And it's already been  
13 established through Mr. Paris, who's identified those  
14 text messages. In addition to it, are there any other  
15 text messages that has not been previously identified or  
16 testified to by Mr. Paris or another witness?

17 MR. GILL: No, sir.

18 THE COURT: Mr. Moore, do you have anything  
19 else to add?

20 MR. MOORE: No, I think that the text  
21 messages in green were --

22 THE REPORTER: I'm sorry. Can you speak  
23 into the microphone?

24 MR. MOORE: I'm sorry. I'm leaning back  
25 here.

1 I think the ones in green were the ones  
2 that involve Joy and the ones in blue at the back were  
3 the ones that Mr. Paris made.

4 THE COURT: That is correct. I believe  
5 that's also Mr. Harris.

6 MR. MOORE: Paris.

7 MR. GILL: Paris.

8 THE COURT: Paris. Thank you.

9 All right. Anything else?

10 MR. MOORE: Huh-uh.

11 THE COURT: 229B2 is admitted for all  
12 purposes. Your objection is overruled.

13 MR. MOORE: And for -- just for the record,  
14 Judge, our objection is he identified this phone number  
15 and he testified that there were some calls made. I  
16 don't think he was -- he ever specifically identified  
17 any of those texts.

18 THE COURT: Okay. I -- well, first off is  
19 that if it was -- if it wasn't identified, I believe it  
20 was properly authenticated based upon his testimony and  
21 based upon the overall summation of all the information  
22 that he testified to regarding the text, as well as the  
23 telephone conversations, as well the records that were  
24 reflected to that are in the record. Therefore, I do  
25 find that if there wasn't a specific identification to

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1 the text, it would still be admissible. If, however, I  
2 do believe that there was some conversation about some  
3 text, that he did transmit, I'm not going to --

4 MR. GILL: That, Your Honor. We're also  
5 not offering the content of these for the truth of the  
6 matter asserted. Actually, the relevance of it is, is  
7 to show that their conversation -- a text conversation  
8 between Mr. Hummel and his wife.

9 THE COURT: All right. Your objection is  
10 overruled.

11 (OPEN COURT PROCEEDINGS)

12 THE COURT: Members of the jury, State's  
13 Exhibit 229B2 is admitted for all purposes.

14 (State's Exhibit No. 229B2 admitted)

15 DIRECT EXAMINATION (Cont'd)

16 BY MR. GILL:

17 Q. Ms. Freeze, now let me hand you what's been  
18 marked as 229D, as in dog, 2 and ask if you could take a  
19 second and look through that exhibit? In fact, let's go  
20 just back to December 16th. That might be the easiest  
21 way for you to authenticate this.

22 You testified earlier there was a date that  
23 Mr. Hummel telephoned you repeatedly; is that correct?

24 A. Yes.

25 Q. That was December 16th of 2009?

1 A. Yes.  
2 Q. Do you see your -- your telephone number  
3 reprinted in State's Exhibit 229D2?

4 A. Yes.  
5 Q. And the date December 16th?

6 A. Yes.  
7 Q. Does that accurately reflect the telephone  
8 calls that were placed to your telephone from Mr.  
9 Hummel's telephone on December 16th of 2009?

10 A. Yes.  
11 Q. Does the document go on to accurately reflect  
12 the telephone calls that were made -- before and after  
13 on the document -- the telephone calls that were made  
14 back and forth between you and Mr. Hummel?

15 A. Yes.  
16 MR. GILL: We'll offer 229D2.  
17 MR. MOORE: Judge, I would have the same  
18 objections that we -- that I made in connection with the  
19 prior Exhibit, No. 229B2, in regard to 229D2.

20 THE COURT: All right. Your objection is  
21 overruled. The Court's ruling -- previous ruling  
22 applies. 229D2, Delta, 2 is admitted.

23 (State's Exhibit No. 229D2 admitted)  
24 Q. (BY MR. GILL) Ms. Freeze, you testified that  
25 Mr. Hummel visited you the evening of your daughter's

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1 birthday?  
2 A. Yes.  
3 Q. And while he was there, your daughter was  
4 present in your apartment also?

5 A. Yes.  
6 Q. And so at least on that occasion, Mr. Hummel  
7 had an opportunity to converse and -- and interact with  
8 your daughter?

9 A. Yes.  
10 Q. And did -- did they share something that  
11 evening due to the fact that it was her birthday?

12 A. He read her a book.

13 Q. What book did he read?

14 A. It Could Have Been Worse.

15 Q. And what -- what kind of book is that?  
16 Children's book?

17 A. Yes.

18 Q. And why was it that book that she wanted read  
19 to her on that particular occasion?

20 A. It's her favorite.

21 Q. And your daughter turned what age that evening?

22 A. Six.

23 Q. Let me show you what's been marked as State's  
24 Exhibit No. 303 and ask if you recognize what's  
25 contained in State's Exhibit 303?

1 A. It's the book.

2 Q. Is that a copy of the cover of the -- of the  
3 book that Mr. Hummel read to your daughter that evening?

4 A. Yes.

5 MR. GILL: We offer 303.

6 MR. MOORE: Judge, I don't have any  
7 objections.

8 THE COURT: 303 is admitted for all  
9 purposes.

10 (State's Exhibit No. 303 admitted)

11 MR. GILL: May I publish it, Your Honor?

12 THE COURT: You may.

13 Q. (BY MR. GILL) Ms. Freeze, is this the cover of  
14 the book that Mr. Hummel read to your daughter on the  
15 evening hours of December 17th of 2009?

16 A. Yes.

17 MR. GILL: We pass the witness.

18 THE COURT: Cross-examination?

19 MR. MOORE: Thank you, Your Honor.

# CROSS-EXAMINATION

20 BY MR. MOORE:

21 Q. Ms. Freeze, I'm Larry Moore. We visited by  
22 telephone before; is that correct?

23 A. Yes.

24 Q. You were kind enough to talk to me when I  
25

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1 called you.

2 I want to ask you a few questions about  
3 your relationship with John, and if I ask you something  
4 you don't understand, just let me know, and I'll try to  
5 rephrase it. Okay?

6 A. Okay.

7 Q. You said that you had worked at the E-Z Mart --  
8 that -- that you did work at the E-Z Mart for about a  
9 year and a half; is that right?

10 A. Yes.

11 Q. How long had you been working there when you  
12 first met John?

13 A. About six months.

14 Q. And I think you said that generally he would --  
15 he would come in in the evening hours on his way to work  
16 and then stop back in the early morning hours on his way  
17 back from work; is that right?

18 A. Yes.

19 Q. What shift did you work?

20 A. 10:00 to 6:00.

21 Q. 10:00 at night until 6:00 in the morning?

22 A. Morning.

23 Q. What days did you work?

24 A. I really don't remember.

25 Q. Okay. Did you -- did you work seven days a

1 week, or was it --  
2 A. No.  
3 Q. -- five days or four?  
4 A. Four days a week.  
5 Q. Was your shift always 10:00 p.m. to 6:00 a.m.?  
6 A. Yes, it was.  
7 Q. Did you work the same days of the week every  
8 week, or did your shift rotate?  
9 A. I worked same days every week if we weren't  
10 short. If they were short, I worked more.  
11 Q. When you would work at the store in -- in  
12 that -- from 10:00 at night until 6:00 in the morning,  
13 would you be the only employee for the E-Z Mart that was  
14 there during that time?  
15 A. Yes.  
16 Q. The -- and I think you said that the store sits  
17 there on Highway 174 as you're going south from Fort  
18 Worth to Cleburne; is that right?  
19 A. Yes.  
20 Q. What kind of gasoline do y'all sell?  
21 A. Regular, super.  
22 Q. Was -- was it a particular brand gasoline?  
23 A. No.  
24 Q. You said that -- that the first time that John  
25 came into the store that you recall meeting him was

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1 sometime in late 2009 --  
2 A. Yes.  
3 Q. -- is that right?  
4 By late 2009, can you narrow it down? Was  
5 it September, October, November, December, or do you  
6 have any idea?  
7 A. I have no idea.  
8 Q. Do you know how long he had been stopping in  
9 the store or for about how long he had been stopping in  
10 the store whenever y'all decided that y'all were going  
11 to become friends? You said that you talked to him 15  
12 or 20 times.  
13 A. I would say two weeks to a month's time.  
14 Q. Two weeks to a month?  
15 A. Yeah.  
16 Q. Now, he would stop in a lot. Would he stop in  
17 on the way to work and then coming home from work the  
18 same day or would it be on different days, or how would  
19 it work?  
20 A. In the beginning he would stop in on his way to  
21 work but not on his way back. And then as time went on,  
22 it was -- yes, he'd be there on his way to work and  
23 back.  
24 Q. Okay. Do you know what hours he worked at the  
25 hospital?

1 A. No, I don't.  
2 Q. On the days that you weren't working, do you  
3 know whether or not he stopped at the E-Z Mart or not?  
4 A. Do I know?  
5 Q. Uh-huh.  
6 A. No, I don't know what he did --  
7 Q. Okay.  
8 A. -- outside.  
9 Q. Would -- would -- when y'all first started  
10 talking together, I take it that -- you said that y'all  
11 would go outside and smoke together and just kind of  
12 have general conversation and so forth; is that right?  
13 A. Yes.  
14 Q. After that first two weeks or a month, whatever  
15 it was, at -- how -- how would you characterize your --  
16 your relationship at that point?  
17 A. We were friends.  
18 Q. You -- you said, at one point in talking to Mr.  
19 Gill, that Mr. Hummel would -- was pushing you or in  
20 some way trying to get you to have -- engage in sexual  
21 relations with him; is that right?  
22 A. Yes.  
23 Q. When did that -- when did that start?  
24 A. I can't tell you.  
25 Q. Okay. Now, you said earlier on direct

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1 examination that you were going through a divorce during  
2 that period of time in late 2009; is that right?  
3 A. Yes.  
4 Q. When was your divorce actually filed?  
5 A. I filed December, 2008.  
6 Q. Okay. So you had -- your -- your divorce had  
7 been going on for almost a year by the time you met Mr.  
8 Hummel; is that right?  
9 A. Yes.  
10 Q. You also said something about that you had a  
11 boyfriend at that time -- at the time that you came to  
12 know Mr. Hummel; is that right?  
13 A. I still have that boyfriend.  
14 Q. Okay. Were -- how long had you been involved  
15 with your boyfriend at that point?  
16 A. A year.  
17 Q. Okay. So you had -- you had had a  
18 relationship. Was it a boyfriend/girlfriend  
19 relationship that you had with your boyfriend for about  
20 a year?  
21 A. Yes.  
22 Q. So you had had a romantic relationship with  
23 this man for about a year, probably two-thirds of a year  
24 anyway, by the time that you ever met John Hummel; is  
25 that right?

1 A. Yes.

2 Q. You indicated in your -- in your direct  
3 examination that you were always very up front with John  
4 and very frank about the fact that your friendship with  
5 him was as -- as friends; is that right?

6 A. Yes.

7 Q. And that you didn't -- it was not a romantic  
8 relationship, in your mind; is that -- is that correct?

9 A. I indicated to John that we were friends and  
10 that he was married and that I had a boyfriend.

11 Q. Okay. And you told me, I think on -- or you  
12 told Mr. Gill on direct examination that he indicated to  
13 you that he understood that; is that right?

14 A. Yes.

15 Q. All right. Did he -- did you ever discuss with  
16 him running off and getting married?

17 A. No.

18 Q. Did you ever discuss with Mr. Hummel y'all  
19 making a life together and going forward from that point  
20 together as man and wife?

21 A. John had said something about it's sad that  
22 when you find someone or when you -- you're finally able  
23 to meet somebody that you feel like you could be with,  
24 you're not able to.

25 Q. Okay. So there was a recognition to what he

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1 told you, that it was not -- that your relationship  
2 wasn't going anywhere; is that right?

3 A. Rephrase, please.

4 Q. Okay. You said that what he told you is that  
5 it's sad that when you finally meet somebody that you  
6 feel like you could have a relationship with, that it  
7 just can't happen or it's not going to be able to  
8 happen, something like that?

9 A. Yes.

10 Q. So did that denote to you that he recognized  
11 there was not going to be a relationship?

12 A. Yes.

13 Q. Okay. And -- and you had made that clear to  
14 him before you ever found out his wife was pregnant; is  
15 that right?

16 A. Yes.

17 Q. Throughout your relationship, your relationship  
18 with Mr. Hummel is one of friends?

19 A. Yes.

20 Q. Now, at one point you indicated that you were  
21 having some problems, that you were under a lot of  
22 stress because you were going to have a hearing on  
23 your -- on your divorce and -- and you were having  
24 problems with your boyfriend; is that right?

25 A. Yes.

1 Q. And that's the one and only time that -- that  
2 you had any kind of sexual -- sexual relationship with  
3 Mr. Hummel?

4 A. Yes, it is.

5 Q. And -- and the best that you could recall from  
6 looking at the text messages and so forth, that was  
7 sometime around the 10th of December?

8 A. Yes.

9 Q. Now, in those text messages, there are  
10 occasions where you and Mr. Hummel have very graphic  
11 descriptions of sexual relations and so forth; is that  
12 right?

13 A. It's called sexting, yes.

14 Q. It's called what?

15 A. Sexting.

16 Q. Sexting. Okay.

17 Was it your intent by those text messages  
18 to lead him on in any way?

19 A. No.

20 Q. Did you feel like that -- that those text  
21 messages were in any way inconsistent with what you had  
22 continually told him from the very first, that y'all  
23 weren't going to have any kind of relationship together?

24 A. No, it was conflicting, but we were just having  
25 fun.

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1 Q. Okay. Do you recall when it was that you  
2 learned that his -- his wife was pregnant?

3 A. Within a day or two after having sex.

4 Q. Okay. So sometime after the 10th of -- of  
5 December of 2009?

6 A. Yes.

7 Q. And you learned it from Mr. Hummel, is the way  
8 I understand it; is that correct?

9 A. Yes.

10 Q. Do you recall how it came up in the  
11 conversation or anything else?

12 A. He was wearing the Axe cologne while getting  
13 ready to (sic) work, and she made a statement about how  
14 it made her nauseous, and I said, Is she pregnant? And  
15 he said, yes.

16 Q. Okay. And then at that point I think you said  
17 that you -- you told him, That's it, I don't want to  
18 have anything else to do with you, I don't want to talk  
19 to you or something like that?

20 A. I told him to leave me alone, yes.

21 Q. Okay. And you discussed with him throughout  
22 your relationship that you weren't going to be a  
23 home-wrecker. You weren't going -- he was in a  
24 relationship, you were in a relationship, and that you  
25 weren't going to have any part of -- of ending his

1 marriage; is that correct?

2 A. Yes.

3 Q. As a matter of fact, you told him that that was  
4 part of the problem in your marriage; is that right?

5 A. Yes.

6 Q. Mr. Hummel never discussed with you that he  
7 wanted to leave his wife or his family; is that correct?

8 A. Not that I recall, no.

9 Q. All right. Your -- you said your divorce  
10 became final. You had a hearing on the 16th, and the  
11 divorce became final on the 16th; is that right?

12 A. Yes.

13 Q. The 16th of December of 2009?

14 A. Yes.

15 Q. And you were -- you were happy because you been  
16 concerned about a pending custody issue in regard to the  
17 case; is that right?

18 A. I was relieved that I became sole managing  
19 conservatorship of my daughter, yes.

20 Q. All right. And that was an important day for  
21 you because of that; is that right?

22 A. Yes.

23 Q. Then on the 17th -- I think you said December  
24 17th was your daughter's sixth birthday?

25 A. Yes.

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1 Q. When was the conversation -- you testified  
2 there was a conversation about your cooking spaghetti  
3 for your daughter and that you had forgot the mushrooms  
4 and so forth. When did that conversation take place?

5 A. December 17th.

6 Q. All right. Was it by telephone or by text  
7 message?

8 A. It was by text message.

9 Q. So that's reflected in the text messages that  
10 have been introduced in evidence?

11 A. Yes.

12 Q. You said that -- how -- how many times during  
13 the time that you knew John Hummel, up to and including  
14 December the 17th, how many times during that whole time  
15 do you think he actually came to your apartment?

16 A. Less than a handful of times.

17 Q. By handful, you mean five, six?

18 A. Three, four, maybe.

19 Q. All right. When you had -- when you -- on that  
20 one occasion around December the 10th when you had  
sexual relations with John, was that at your apartment?

22 A. Yes.

23 Q. You had told John that you didn't want to have  
24 anything to do with him whenever you found out his wife  
25 was pregnant; is that right?

1 A. Yeah.

2 Q. You told him you didn't want him to call you,  
3 you didn't want him to -- to text you anymore or  
4 anything like that; is that correct?

5 A. Again, I told him to leave me alone. He wanted  
6 to know if it was indefinite. I told him I didn't know.

7 Q. It was indefinite?

8 A. Yeah.

9 Q. Okay. When -- when you had not heard from him  
10 after the 17th, you texted him on December the 19th; is  
11 that right?

12 A. Yes.

13 Q. So at that point, you were trying to get ahold  
14 of him, I take it, to see what was going on, how come  
15 you hadn't heard from him?

16 A. I was -- yeah.

17 Q. Okay. Chris -- there was a -- Mr. Gill had  
18 asked you about after the time that John was arrested in  
19 connection with this case, Chris Paris contacted you and  
20 asked you if -- on behalf of John if you wanted  
21 information on how to write him; is that right?

22 A. Yes.

23 Q. And you told Mr. Paris no; is that correct?

24 A. Yes.

25 Q. Okay. And you haven't written to John since

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1 he's been in jail; is that right?

2 A. No.

3 Q. Have you -- after that first phone call, did  
4 Mr. Paris continue to call -- call you? I'm sorry.

5 A. He called me again. He said it seemed like I  
6 needed somebody to talk to since I was so upset about  
7 this whole ordeal.

8 Q. Did he -- during -- did he try to -- to  
9 establish a relationship with you?

10 A. He wanted to know where I worked, what I looked  
11 like, if I had a Facebook, if I was married or single.

12 Q. Okay. So it was your impression he was kind of  
13 hitting on you at that point?

14 A. Yes.

15 Q. Thank you very much, Ms. Freeze.

16 MR. MOORE: I'll pass the witness, Judge.

17 THE COURT: Redirect?

18 MR. GILL: No further questions, Your  
19 Honor.

20 MR. MOORE: Judge, I have no objection to  
21 Ms. Freeze being excused at this point. I would ask  
22 that she remain subject to the Rule and subject to  
23 recall.

24 THE COURT: All right. Ms. Freeze, you are  
25 subject to being recalled. The Rule has been invoked.



1 You may not discuss your testimony with anybody or any  
2 other potential witnesses. You may not be present in  
3 the courtroom while the trial is ongoing. You need to  
4 make yourself available if in the event either side  
5 contacts you for -- contacts you for the purposes of  
6 testifying again. Do you understand, Ms. Freeze?

7 THE WITNESS: Yes, I do.

8 THE COURT: Thank you, ma'am. You may step  
9 down.

10 (Witness retires)

11 THE COURT: All right. We will take a  
12 ten-minute recess. Please remember your previous  
13 instructions, members of the jury. Thank you very much.  
14 We'll be in recess for ten minutes.

15 (Recess from 3:47 p.m. to 4:15 p.m.)

16 (Open court, Defendant present, no jury)

17 THE COURT: All right. Let's bring in the  
18 jury, please.

19 (Jury present)

20 THE COURT: Please be seated.  
21 State, call your next witness.

22 MR. BRISSETTE: Dr. Bao.

23 THE COURT: Dr. Bao.

24 (Witness enters courtroom)

25 THE COURT: Dr. Bao, please come up.

1 Please raise your right hand. Face me.  
2 THE WITNESS: Okay.  
3 (Witness sworn)  
4 THE COURT: Please be seated, sir.  
5 Doctor, would you please pull the  
6 microphone closer to you so we can hear what you say?

7 THE WITNESS: Okay.

8 THE COURT: All right. You may proceed  
9 when you're ready.

10 SHIPING BAO,  
11 having been first duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. BRISSETTE:

14 Q. Good afternoon, Doctor. How are you, sir?

15 A. Very good. Thank you.

16 Q. Can you state your full name for the record?

17 A. My name -- my name is Shiping Bao.

18 Q. How do you spell "Shiping"?

19 A. S-h-i-p-i-n-g.

20 Q. And how do you spell your last name, Doctor?

21 A. B-a-o.

22 Q. Doctor, where did you grow up?

23 A. I grew up in China.

24 Q. What part of China? What province?

25 A. Called Anhui Province, which is five -- five

1 hours from China City.

2 Q. And did you go to university in China?

3 A. Yeah.

4 Q. What years did you go to university there?

5 A. 1980.

6 Q. Did you receive a master's of science degree  
7 from -- in China?

8 A. Yes.

9 Q. What was your master's of science in, what --  
10 what specialty?

11 A. It's called radiological medicine.

12 Q. Dr. Bao, I think that microphone will adjust up  
13 if you want it to so you don't have to bend over.

14 A. Okay.

15 Q. Okay. And where did you receive your medical  
16 degree from?

17 A. Anhui Medical University.

18 THE REPORTER: I'm sorry?

19 THE WITNESS: Anhui, A-n-h-u-i -- A-n-h-u-i  
20 Medical University.

21 Q. (BY MR. BRISSETTE) Was that in the country of  
22 China as well, sir?

23 A. Yeah.

24 Q. When did you come to the United States?

25 A. In 1992.

1 Q. And were you -- have you been working in the  
2 medical field since 1992 in the United States?

3 A. Yes.

4 Q. Have you been accepted as a -- a medical doctor  
5 here in the United States?

6 A. Yes.

7 Q. And where are you board certified?

8 A. Texas, and also -- oh, I have the Texas medical  
9 license. I certified in anatomical, clinical and  
10 forensic pathology by American Board of Pathology.

11 Q. And do you currently hold a position here in  
12 Tarrant County?

13 A. Yeah, Deputy Medical Examiner.

14 Q. You work for Dr. Peerwani's office?

15 A. Yes.

16 Q. Did you do any residencies while you were in  
17 the states in the field of medicine?

18 A. I did the pathology residency in Birmingham,  
19 Alabama from 2004 to 2008.

20 Q. Was that in the Baptist Health System there in  
21 Birmingham?

22 A. Yes.

23 Q. And from 1988 to 1992, did you do a residency  
24 in China?

25 A. From -- I'm sorry?



1 Q. From '88 to '92, were you doing a residency in  
2 radiation oncology there in mainland China?

3 A. Yes.

4 Q. Did you -- when did you start at the Tarrant  
5 County ME's Office as a Deputy Medical Examiner?

6 A. In -- on July 1st, 2009.

7 Q. Prior to that, were you doing a fellowship at  
8 Dr. Peerwani's office in the field of forensic  
9 pathology?

10 A. Yeah, for one year.

11 Q. Have you had an opportunity from 1992 to 1995  
12 to work at Florida State University?

13 A. Yes.

14 Q. What did you do at FSU?

15 A. Medical research.

16 Q. From 1995 to 2001, did you have a chance to  
17 work at the Washington State University?

18 A. Yes.

19 Q. And what were you doing there?

20 A. Also medical research, cancer.

21 Q. Were you working in the College of Pharmacy  
22 there at Washington State?

23 A. Yes.

24 Q. And were you also a medical research scientist  
25 at a private corporation known as XL Sci-Tech in

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1 Richland Washington as well?

2 A. Yes.

3 Q. Are you a member of the National Association of  
4 Medical Examiners?

5 A. Yes.

6 Q. And how long have you been a member of that?

7 A. Three years.

8 THE REPORTER: I'm sorry?

9 THE WITNESS: Three.

10 Q. (BY MR. BRISSETTE) As a Deputy Medical  
11 Examiner, are you assigned cases each morning to -- to  
12 work?

13 A. Yes.

14 Q. And who does the assignments, typically?

15 A. Dr. Peerwani.

16 Q. Dr. Peerwani decides which of his deputies  
17 will -- will work on bodies that have been presented for  
18 autopsy; is that correct?

19 A. That -- that's during the weekdays. During the  
20 weekend, I -- I decide myself.

21 Q. People work shifts on the weekends?

22 A. Uh-huh.

23 Q. Is that yes?

24 A. Yes.

25 Q. On a particular case that would be presented

1 for autopsy, does Dr. Peerwani's office assign a  
2 particular case number to the remains as they are  
3 presented for autopsy?

4 A. Yes.

5 Q. Are you familiar with a Medical Examiner Case  
6 No. 0914836?

7 A. Yes, I did autopsy on this case.

8 Q. Was this a male or a female?

9 A. Female.

10 Q. Was this an adult female or a child female?

11 A. Adult female.

12 Q. When a person presents at autopsy, what do you  
13 do to begin with? Are they still in a body bag?

14 A. First we review the chart. We review the  
15 medical history, the scene investigation, then pursue  
16 the autopsy.

17 Q. Do you begin with x-rays of the body bag?

18 A. Yes.

19 Q. Why do you do that?

20 A. We try to detect all -- all the metals in the  
21 body --

22 THE REPORTER: I'm sorry?

23 THE WITNESS: All the metal, m-e-t-a-l.

24 THE COURT: All the metals.

25 THE WITNESS: Metals, yeah. In case the

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1 bodies -- the knives with the body.

2 Q. (BY MR. BRISSETTE) After -- is the body at  
3 some point removed from the -- the body bag that it was  
4 presented in?

5 A. Uh-huh.

6 Q. Is that yes?

7 A. Yes.

8 Q. Do you take photographs to document your  
9 findings as you go through these?

10 A. Yes.

11 Q. In addition to documentation via photograph, do  
12 you make drawings of the injuries that you see when you  
13 look at a body during autopsy?

14 A. Yes.

15 Q. And are those things that you keep in the  
16 normal course of your business as part of your report?

17 A. Yes.

18 Q. Did you have an occasion then to do an autopsy  
19 with that case number on a particular date in December  
20 of 2009?

21 A. Yes.

22 Q. What date did you do this autopsy?

23 A. Let me go through the chart.

24 December 19th, 2009.

25 Q. When you first look at the body, do you make

1 notations as to whether or not the body presented with  
2 any particular clothing?

3 A. Yes.

4 Q. If you need to refer to your records, please do  
5 so. But can you tell the members of the jury what  
6 clothing that the body with this particular case number  
7 presented with?

8 A. Okay. I need go through the chart.

9 On this case the bodies presented to me  
10 with black body bag and she clad in, pink shorts and  
11 white T-shirt and bra.

12 MR. BRISSETTE: May I approach the witness,  
13 Your Honor?

14 THE COURT: You may.

15 Q. (BY MR. BRISSETTE) Dr. Bao, when you collect  
16 items of clothing such as this after you've had a chance  
17 to read your death investigator's report, did you  
18 package certain items in an -- or one-gallon paint cans  
19 that day?

20 A. Yes.

21 Q. I'm going to show you what's been marked for  
22 identification purposes as 473A, our exhibit number. Do  
23 you recognize the tape and the markings on that can?

24 A. Yes.

25 Q. And are they consistent with your lab number or

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1 your ME number for the autopsy you're talking about  
2 today?

3 A. Yes. Normally we have the case number and the  
4 name.

5 Q. Did -- did you place items in that particular  
6 can?

7 A. Yes.

8 Q. And with respect to that can, can you identify  
9 and tell us what you placed in that can?

10 A. This is the blouse.

11 Q. Is that the blouse or the white T-shirt you  
12 talked about?

13 A. I'm not sure.

14 Q. Let me show you what's been marked for  
15 identification purposes as State's 470. Take a look at  
16 470 and see if you can tell me what, if anything,  
17 relates to this case with 470?

18 A. This case labeled "bra," so it's white bra.

19 Q. 471, do you recognize this can, sir?

20 A. Yes. It also has name and case number, pink  
shorts.

22 Q. And are these the pink shorts that you just  
23 talked about that the body presented with?

24 A. Yes.

25 Q. And did you place them in this can?

1 A. Uh-huh.

2 Q. Is that yes?

3 A. Yes.

4 Q. Let me show you what's been marked for  
5 identification purposes as State's 304. Do you  
6 recognize 304?

7 A. Yes.

8 Q. And is this how the body presented at autopsy?

9 A. Yes.

10 Q. Once the bag was removed?

11 A. Yes.

12 Q. State's 305, is that another representative  
13 photo of the body as it presented at autopsy?

14 A. Yes.

15 Q. Do you recognize the autopsy date on the card?

16 A. Yes. There's a date and the case number.

17 Q. All right. Would the autopsy had been started  
18 then on the date that's depicted on the ruler in the  
19 photos?

20 A. Yes.

21 Q. So the date would have been what?

22 A. December 18, 2009.

23 Q. Now, the shirt that you collected, is that  
24 depicted here in 305?

25 A. 305, yes. Yeah, this is the shirt, yeah.

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1 Q. And in State's 304 is the -- the bra that you  
2 just testified, is that depicted here?

3 A. Yes.

4 Q. Doctor, I'm going to show you what's been  
5 marked and identified as 437B. Do you recognize the  
6 shirt that came out of the -- the can labeled 437A to be  
7 one and the same as depicted in your photos there?

8 A. Yeah, this is -- yeah, white shorts.

9 Q. Do you recall looking at these photos in  
10 preparation for your testimony at the Medical Examiner's  
11 Office where this -- where this photo is depicted on a  
12 larger screen when we were prepping?

13 A. I do not recall any -- it's -- it's been two  
14 years.

15 Q. All right. Do you remember visiting a couple  
16 of weeks ago?

17 A. Uh-huh.

18 Q. Is that yes?

19 A. Yes.

20 Q. Do you remember looking at photos of this  
21 shirt?

22 A. Yes.

23 Q. And do you remember looking at your report here  
24 and refreshed your memory that you placed an item in a  
25 particular can? Do you recall that?

1 A. Yes.  
2 Q. Is that -- is this the item that's depicted in  
3 305?

4 A. Uh-huh.  
5 Q. Around the neck of the individual?

6 A. Okay.

7 Q. Is that --

8 A. Yes.

9 Q. Is it the one and the same?

10 A. Yes.

11 MR. BRISSETTE: Your Honor, at this time  
12 we'd offer 437B for all purposes. I believe that  
13 completes the conditional statement.

14 MR. MOORE: Judge, we have no additional  
15 objections other than the one we raised in connection  
16 with the pretrial motions.

17 THE COURT: All right. 437B is admitted  
18 for all purposes. Your objection is overruled.

19 (State's Exhibit No. 437B admitted)

20 MR. BRISSETTE: Your Honor, at this time  
21 the State would tender to Defense Counsel item and  
22 contents labeled 470 and 471 and offer them for all  
23 purposes as well to link our conditional photos from  
24 earlier.

25 MR. MOORE: All right. Judge, I don't have

1 any additional objections to those exhibits other than  
2 what we raised at pretrial.

3 THE COURT: 470 and 471 is admitted. Your  
4 objection continues to be overruled.

5 You may proceed.

6 (State's Exhibit Nos. 470, 471 admitted)

7 MR. BRISSETTE: Your Honor, I believe that  
8 removes the conditional statement as well from the  
9 images that Ms. Belcher testified to about the bra. I  
10 will get those numbers to the Court when I can find  
11 them.

12 Q. (BY MR. BRISSETTE) Dr. Bao, as part of  
13 autopsy, do you -- you say you document it with  
14 photographs; is that correct?

15 A. Yes.

16 Q. We've already looked at two photographs. I  
17 want to show you -- do you recognize State's Exhibit  
18 306?

19 A. Yes.

20 Q. State's Exhibit 307?

21 A. Yes.

22 Q. State's Exhibit 308?

23 A. Yes.

24 Q. State's Exhibit 309?

25 A. Yes.

1 Q. State's 310?

2 A. Yes.

3 Q. State's 311?

4 A. Yes.

5 Q. State's Exhibit 312?

6 A. Yes.

7 Q. State's 313?

8 A. Yes.

9 Q. State's 314?

10 A. Yes.

11 Q. On State's Exhibit 315, have some items been  
12 shaded prior to the exhibit being brought to court?

13 A. Yes.

14 Q. In your original photograph, there were areas  
15 of -- of the body that was autopsied that were visible;  
16 is that correct?

17 A. Yes.

18 Q. And some images have been -- some graphic  
19 block-outs have been placed on the photo; is that  
20 correct?

21 A. Yes.

22 Q. And you've had this photo taken --

23 A. Yeah, I have photo with me.

24 Q. State's 316?

25 A. Yes.

1 Q. State's 317 and 318?

2 A. Yes.

3 Q. Do you recognize those photos?

4 A. Yes.

5 Q. Were all -- were all those photos taken at your  
6 instruction or by you during autopsy?

7 A. Yes. I have same photo with me.

8 Q. And you keep a collection -- you say you have  
9 same photo with you. You keep a collection of the  
10 photos with you as part of your case file; is that  
11 correct?

12 A. Yes.

13 MR. BRISSETTE: At this time the State  
14 would tender to Defense Counsel State's 304 through 318,  
15 inclusive.

16 MR. MOORE: Judge, may we approach?

17 (BENCH CONFERENCE PROCEEDINGS)

18 MR. MOORE: I don't have any -- I just want  
19 to make sure. It looks like -- tell you what, I don't  
20 have any objections to 304 through 314. I do object to  
21 315 because I don't think that there's any wounds  
22 depicted on that that I can't -- that are not shown in  
23 other photographs.

24 I don't have any objection to 316 or 317.

25 I do object to 318 on the ground of 403.

1 It's more prejudicial than probative.

2 THE COURT: All right. The exhibits with  
3 the exception of 315 and 318, those are admitted.

4 Now, with regard to 315, do you have a  
5 response?

6 MR. BRISSETTE: I didn't hear their  
7 objection.

8 MR. MOORE: My only objection is that I  
9 think -- I don't see any wounds that are depicted on  
10 that that aren't depicted on some other photographs.

11 THE COURT: So you're saying that this is  
12 irrelevant?

13 MR. MOORE: Yeah.

14 THE COURT: Or it's cumulative?

15 MR. MOORE: Cumulative.

16 MR. BRISSETTE: Judge, on 315 it's the only  
17 picture we have of the chest below the breast area that  
18 shows the stab wounds to the abdomen. We're talking  
19 about the one to the right of the ruler and right below  
20 the ruler.

21 THE COURT: Okay.

22 MR. BRISSETTE: That's why the photo was  
23 chosen.

24 THE COURT: Do you have any other  
25 significance to that particular area of the stabbing?

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1 MR. BRISSETTE: Well, I think it goes to  
2 the last photo you have at the bottom there.

3 The doctor's going to testify that there  
4 were organs behind those stab wounds that were damaged  
5 as result of these injuries.

6 THE COURT: Okay. 315 is admitted.

7 Now, with regard to 318?

8 MR. BRISSETTE: We have -- there's been  
9 testimony today before the Court that the individual was  
10 pregnant. This is the photo that starts the chain of  
11 custody for the DNA samples to prove paternity for this  
12 baby and for the -- the fact that she was pregnant.

13 MR. MOORE: Paternity of this baby is not  
14 an issue in this --

15 THE COURT: It's still contextual, though.  
16 I understand what you're also saying, but however, the  
17 matter at hand is that this goes to -- well, go ahead  
18 and complete your thought.

19 MR. BRISSETTE: It -- it -- it -- it --  
20 with -- based on the stab wounds that you have depicted  
21 in 315 in the area which the body is stabbed, it goes to  
22 what Mr. Hummel was stabbing at. When you look at the  
23 stab wounds in 315 and you line that up anatomically on  
24 a female that's pregnant and you're stabbing in the area  
25 where the womb is.

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1 THE COURT: I've carefully weighed the  
2 information and argument of Counsel; however, the Court  
3 finds that under the 403 analysis the probative value  
4 substantially outweighs the danger of unfair prejudice.

5 Accordingly, the State has the burden of  
6 sustaining and proving beyond a reasonable doubt that  
7 the events in question involving Mrs. Joy Hummel being  
8 pregnant at the time of the offense in addition to her  
9 death, the manner of its death, that these photographs  
10 should be and will be admitted.

11 MR. MOORE: And, Judge, just so that I'm  
12 sure, we have an additional objection that that  
13 particular photograph is more prejudicial because it's  
14 not really relevant. He's not indicted in this case  
15 with having killed the baby, and for that reason, our --  
16 our argument is that the prejudice overrules --  
17 outweighs the probative value.

18 I understand it's the Court's ruling. I  
19 just want to make sure my objection --

20 THE COURT: Absolutely. Absolutely. I  
21 understand it. But I also want to emphasize the  
22 thoughtfulness that I have considered this heavily in  
23 that the fact that this is contextual, in that the  
24 course -- that you've also said that there's an issue  
25 with regard to the transaction of the events of the

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1 deaths, the manner and how they occurred are a potential  
2 issue for the fact finder. Accordingly, these  
3 photographs should be and will be considered on that --  
4 as part of the Court's logic as well.

5 MR. MOORE: All right. I understand the  
6 Court's ruling.

7 THE COURT: All right.

8 (OPEN COURT PROCEEDINGS)

9 THE COURT: Members of the jury, Exhibits  
10 471 -- 470, 471 -- that's not been the subject of what  
11 we were discussing. Excuse me.

12 State's Exhibits 304, 305 through 318 are  
13 admitted.

14 (State's Exhibit Nos. 304-318 admitted)

15 Q. (BY MR. BRISSETTE) Dr. Bao, at the request of  
16 our office, did you redraw some of your drawings that  
17 you had in this so I could discern what you were writing  
18 on the document?

19 A. Yes.

20 Q. Is it safe to say that your notes in autopsy  
21 are in your handwriting and -- and very few people can  
22 read them?

23 A. Could be.

24 Q. Could be?

25 A. Yeah.

1 Q. At our request, did you make three new  
2 drawings?  
3 A. Yes, I did.  
4 Q. With the understanding that we were going to  
5 blow those up?

6 A. Yes. I have the copy with me, too.  
7 Q. I'd like to show you what's been marked for  
8 identification purposes --

9 MR. BRISSETTE: Judge, may the witness  
10 stand up so he can see the exhibit --

11 THE COURT: He may.

12 MR. BRISSETTE: -- for identification?

13 Q. (BY MR. BRISSETTE) Dr. Bao, if you can stand  
14 up.

15 Do you recognize what's now marked as 272A?  
16 Is this one of your drawings, sir?

17 A. Yeah, it's my handwriting, case number, my name  
18 and the deceased --

19 THE REPORTER: I'm sorry?

20 THE WITNESS: The name of the deceased.

21 Q. (BY MR. BRISSETTE) 272B and 272C, are those  
22 your drawings as well, sir?

23 A. Yes, sir.

24 Q. And did you cause those to be generated at our  
25 request?

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1 A. Yes.

2 MR. BRISSETTE: At this time the State  
3 would tender to Defense Counsel 272A through C and offer  
4 them for all purposes before the jury.

5 MR. MOORE: Judge, I have no objection to  
6 those exhibits.

7 THE COURT: 272A, B and C are admitted.  
8 (State's Exhibit Nos. 272A, 272B,  
9 272C admitted)

10 MR. BRISSETTE: Your Honor, may those three  
11 be published at some point?

12 THE COURT: They may.

13 Q. (BY MR. BRISSETTE) Dr. Bao, as part of  
14 autopsy, do you collect certain body fluids from a  
15 deceased?

16 A. Yes.

17 Q. Do you collect them in vials?

18 A. Yes.

19 Q. And do you collect them on blood cards?

20 A. Yes.

21 Q. I'm going to show you what's been marked for  
22 identification purposes as 377. Do you recognize the  
23 small card in the picture of 377?

24 A. Yes, which has the case number and the name.

25 Q. And would you put a blood card in -- in an item

1 such as that?

2 A. Yes.

3 Q. Direct -- directly below that in 377, there  
4 appears to be what, in your professional world? What is  
5 this object here?

6 A. This is blood card.

7 THE REPORTER: I'm sorry?

8 THE WITNESS: Blood card.

9 Q. (BY MR. BRISSETTE) And who puts the blood on  
10 the blood card?

11 A. The technician.

12 Q. And is that technician working at your  
13 direction?

14 A. Yes.

15 Q. Is that tech -- tech -- technician working  
16 right next to you?

17 A. Yes, we work together.

18 Q. And is that a blood card from a person you came  
19 to know as Joy Hummel?

20 A. Yes.

21 Q. And was this blood card generated at the time  
22 of autopsy?

23 A. Yes.

24 Q. Item 379, did you have an occasion to collect  
25 different parts of tissue or a fetus, a baby, from Mrs.

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1 Hummel?

2 A. Yes.

3 Q. And did you package the -- the -- the fetus in  
4 an evidence bag?

5 A. Yes.

6 Q. And do you see your initials on the evidence  
7 bag?

8 A. Yes.

9 Q. And this is the evidence bag that you collected  
10 on December the 18th, 2009?

11 A. Yes.

12 MR. BRISSETTE: Your Honor, at this time  
13 the State would offer 377 and 379 for all purposes,  
14 removing our conditional from earlier.

15 MR. MOORE: Judge, I have no additional  
16 objections other than those we previously made.

17 THE COURT: 377 and 379 are admitted.

18 (State's Exhibit Nos. 377, 379 admitted)

19 Q. (BY MR. BRISSETTE) Dr. Bao, I'm going to show  
20 you what's been marked for identification purposes as  
21 State's Exhibit 441. On page 1 of 441, do you recognize  
22 an evidence card -- blood card depicted in this as well?

23 A. Yes, it's my signature there.

24 Q. All right. And you're talking about the second  
25 card down on the left side; is that correct?



1 A. Yes.

2 Q. And is that a blood card you collected of Joy  
3 Bedford Hummel?

A. Yes.

4 Q. And did you collect that same card -- this card  
5 at autopsy that day as well?

6 A. Yes.

7 MR. BRISSETTE: Judge, may the doctor step  
8 down to the board?

9 THE COURT: He may.

10 Q. (BY MR. BRISSETTE) Dr. Bao, can you come down  
11 here to explain your findings?

12 A. Yes.

13 Q. You have to make one promise for everybody when  
14 you're down here. You have to keep your voice up very  
15 loud, or she's going to get upset at us. Okay? It's  
16 late in the day.

17 If you could take a pointer, on 272A --  
18 what are we looking at here on 272A, sir?

19 A. She had a total of thirty-five stab wounds on  
20 body, including ten on the chest, two on the abdomen,  
21 one on the right thigh, seven on posterior neck, fifteen  
22 on back.

23 Q. And why do you document injuries such as this?

24 A. This is routine for every autopsy case. We  
25

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1 document any injuries on the body.

2 Q. And it's routine for you to count the number of  
3 penetrations to the body?

4 A. Yeah.

5 Q. With respect to the internal organs in this  
6 area, on the front of the body, did you determine, when  
7 you did the autopsy, that there were any damage to the  
8 internal organs of this person?

9 A. Yes. In all the stab wounds, I found out --  
10 there are total of ten stab wounds. Ones to chest  
11 cavity, the ones through heart, twice; ones through  
12 lungs, four times; ones through liver, five times.

13 THE REPORTER: I'm sorry?

14 THE WITNESS: Liver, five times, which  
15 cause the death.

16 Q. (BY MR. BRISSETTE) Can you show me on 272A  
17 approximately where the liver is in the body using the  
18 left side of the diagram?

19 A. The heart is here. The heart was once or  
20 twice, either from back or from front. It's hard to  
21 tell. The lungs, right lung, left lung and liver is  
22 here.

23 Q. What's in the center here where you have  
24 indications of two stab wounds in the center above  
25 what's drawn on this drawing as the belly button; is

1 that correct?

2 A. Yes.

3 Q. If this individual was carrying a child, where  
4 would the child be located in the womb when this --

5 A. In early stage of -- of the child is here.

6 Q. Dr. Bao, in 272B, what are we looking at here,  
7 sir?

8 A. That's a total of six lacerations on the right  
9 parietal skull up to 3.5 by 2.5, which is this bigger  
10 one. This is probably caused by multiple hit.

11 Q. Would you say it was multiple hit by -- by an  
12 object? Can you --

13 A. Yeah.

14 Q. Was it a soft object or a hard object?

15 A. Hard object. Probably the baseball bat,  
16 according to the investigation report.

17 Q. Was the scalp -- was the skin broken on --  
18 on -- on this person's head?

19 A. Yeah, lacerations means the -- the skin or the  
20 scalp break.

21 Q. Did the skull suffer any injuries as a result  
22 of the -- the wounds that you saw?

23 A. In this case, I did not see any skull  
24 fractures.

25 Q. To do autopsy, the person presented with hair

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1 on the head; is that correct?

2 A. Yes.

3 Q. And was the head shaved for you to do your  
4 autopsy?

5 A. Yeah, we shave hair.

6 Q. 272C, sir, what are we looking at here?

7 A. She had six incised wound. Incised wound means  
8 cut, means the length of the wound is greater than  
9 depth. So she had two on the neck, each side of the  
10 neck, three on the right hand and one on left hand.

11 Q. With respect to the neck, are those wounds  
12 going across the neck like this, left to right or right  
13 to left?

14 A. They're one on each side. It's hard to tell  
15 the direction of the injury.

16 Q. You said they were longer than they were deep.  
17 Were they -- how long were they? Do you recall?

18 A. A one-inch and a two-inch. This is one, two --  
19 one-inch long and two-inch long. This -- this wound is  
20 superficial. There's no lethal injury.

21 THE REPORTER: I'm sorry?

22 THE WITNESS: No lethal injury. Lethal.

23 Q. (BY MR. BRISSETTE) Is there a phrase in your  
24 profession called defensive wounds?

25 A. Yes.



1 Q. What is a defensive wound to you, Dr. Bao?

2 A. Defense -- defense wound means the people try  
3 to protect -- protect themselves. They use their hand to  
4 try to grab the knife, which cause typical this type of  
5 injury.

6 Q. The wounds that you're talking about on 272C on  
7 the hands, do you -- is it your medical opinion that  
8 those appear to be defensive in nature?

9 A. Yes.

10 Q. Dr. Bao, as part of your internal exam, did you  
11 have a chance to look at the trachea and larynx of this  
12 individual?

13 A. Yes, which is particularly important in this  
14 case because the body present with superficial thermal  
15 burns and the skin spillage. One of my job is to -- to  
16 determine if she died before the house fire or after  
17 house fire.

18 In this case, I did not see any soot in the  
19 larynx, in the trachea. Also, the postmortem toxicology  
20 report shows there's no carbon monoxide in the blood,  
21 meaning she died before the fire.

22 Q. Where were the thermal injuries on this  
23 individual?

24 A. On -- on the back, butt, legs and arms.

25 Q. Through the -- through the work at the Medical

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1 Examiner's Office at your direction, were you able to  
2 identify these remains?

3 A. Yes.

4 Q. And what was the name that was given to these  
5 remains through your investigation?

6 A. The name of deceased?

7 Q. Yes?

8 A. Joy Bedford Hummel.

9 Q. H-u-m-m-e-l?

10 A. Yes.

11 Q. What was the cause of death, sir?

12 A. Multiple stab wounds.

13 Q. And what was the manner of death? What was  
14 your ruling?

15 A. Homicide.

16 Q. Thank you.

17 MR. BRISSETTE: Pass the witness.

18 THE COURT: Cross-examination?

19 MR. MOORE: Thank you, Judge.

CROSS-EXAMINATION

20 BY MR. MOORE:

21 Q. Dr. Bao, in connection with your autopsy, were  
22 you able to make some kind of estimate as to how old the  
23 fetus was?  
24

25 A. Yes, according to the weight of the fetus.

1 Q. And approximately how old was the fetus at that  
2 point?

3 A. 14 to 15 weeks.

4 Q. Is a fetus -- is a fetus that is 14 to 15 weeks  
5 old capable of survival outside of the womb?

6 A. No.

7 Q. You indicated that there were a number of stab  
8 wounds clustered in the -- in the areas that you've  
9 shown on those diagrams. When stab wounds are clustered  
10 in a particular area like that, is that suggestive to  
11 any particular thing to you?

12 A. Means he did multiple times.

13 Q. All right. Multiple times in one particular  
14 area --

15 A. Yes.

16 Q. -- is that correct?

17 You indicated that there was a -- a  
18 toxicological report done that indicated that there was  
19 no CO<sub>2</sub> in the blood?

20 A. Yes.

21 Q. Was there any other chemicals found within the  
22 body?

23 A. No.

24 Q. Would you -- do you have a copy of the  
25 toxicological report --

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1 A. Yes, I do.

2 Q. Would you refer to that for me, please?

3 A. Yes. Right here.

4 Q. Okay.

5 MR. MOORE: May I approach, Judge?

6 THE COURT: You may.

7 Q. (BY MR. MOORE) May I see the report?

8 A. Yes, right here.

9 Q. Okay. What is this right here?

10 A. It's amphetamine.

11 Q. Amphetamine. Did the -- did -- did the  
12 toxicological report show positive for amphetamine?

13 A. In autopsy tests, we do two steps of tests.

14 First we call a screen test. Screen test is very  
15 sensitive. We can detect almost everything. Because  
16 it's too sensitive, sometimes cause false positive. If  
17 we find particular chemical positive, then we do  
18 confirmation test.

19 Q. And you found a positive for amphetamine, but  
20 when you did the confirmation test --

21 A. It's negative. There's nothing. This is false  
22 positive.

23 Q. Okay.

24 A. It's common in the medical tests.

25 Q. All right. That's the reason you do the

1 confirmation test?

2 A. Yeah. We do for every case if one of them is  
3 positive.

4 Q. All right. The -- on the autopsy that you did  
5 of Mrs. Hummel, you indicated that there were stab  
6 wounds that were found on the front of the body and on  
7 the back of the body and actually one on the leg; is  
8 that correct?

9 A. Yes.

10 Q. All right. The blunt-force impact that you saw  
11 to the head, I think you said that there -- there was  
12 not -- that was not a lethal wound; is that right?

13 A. I did not see the skull fracture. I did not  
14 see the brain injury. But this wound could cause the  
15 concussion, which I cannot tell --

16 Q. Okay.

17 A. -- from autopsy.

18 Q. Could you tell whether or not -- whether or not  
19 that wound would be sufficient to cause the person to  
20 lose consciousness?

21 A. Could.

22 Q. What -- what she died of was the stab wounds;  
23 is that correct?

24 A. Yes, stab wounds to the heart, to the lung and  
25 to the liver.

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1 Q. All right. Thank you very much, Doctor.

2 MR. MOORE: I pass the witness, Judge.

3 THE WITNESS: Thank you.

4 THE COURT: Redirect?

5 MR. BRISSETTE: Yes, Your Honor, briefly.

6 REDIRECT EXAMINATION

7 BY MR. BRISSETTE:

8 Q. Dr. Bao, when a body receives that much trauma  
9 from multiple sources of infliction, can it be a  
10 combination of all that could ultimately cause the death  
11 as well?

12 A. Yes.

13 Q. And you listed the stab wounds to be the -- the  
14 ultimate cause of death. Would the baseball bat, in  
15 splitting the back of somebody's head open, would that  
16 cause serious bodily injury to the individual?

17 A. Since I did not see the skull fracture and the  
18 brain contusion, I -- I'm not sure. The baseball bat  
19 injury can cause death, but I'm too sure the stab wounds  
20 could cause death a hundred percent. Went through heart  
21 two times; lung, four times; liver, five times. That's  
22 good enough.

23 Q. How long would somebody live after their heart  
24 has been stabbed that many times, their liver has been  
25 stabbed that many times and their lungs have been

1 stabbed that many times?

2 A. I would say below two minutes.

3 Q. Thank you.

4 MR. BRISSETTE: Pass the witness.

5 THE COURT: Recross?

6 MR. MOORE: Yes, if I could, Judge.

7 RECROSS-EXAMINATION

8 BY MR. MOORE:

9 Q. You said that the person that was stabbed that  
10 many times would live below -- less than two minutes,  
11 right?

12 A. Yes.

13 Q. Do you know the trauma associated with it? Do  
14 you know how long a person that was stabbed that many  
15 times would be conscious?

16 A. I -- I cannot tell.

17 Q. Okay. You indicated that there were two on the  
18 diagram a moment ago. I think you pointed there were  
19 two stab wounds to the abdomen of Ms. Hummel above her  
20 navel; is that correct?

21 A. Yes.

22 Q. And I think you -- I believe you indicated that  
23 the child, the -- the fetus, would have been positioned  
24 below her navel at this point of her pregnancy; is that  
25 correct?

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1 A. Yes, it's still in the pelvic.

2 Q. It's still in the pelvic region?

3 A. Yeah.

4 Q. You did not denote any stab wounds to the  
5 fetus, did you?

6 A. No.

7 Q. All right.

8 MR. CUMMINGS: That's all, Judge. Pass the  
9 witness.

10 MR. BRISSETTE: No redirect, Your Honor.

11 THE COURT: May Dr. Bao be -- step down  
12 or -- I'm not really sure. One of your witnesses, I  
13 believe, has examined more than one person?

14 MR. BRISSETTE: That would be Dr. Sisler,  
15 Your Honor.

16 THE COURT: All right. May Dr. Bao be  
17 excused?

18 MR. BRISSETTE: Yes.

19 MR. MOORE: Yes.

20 THE COURT: Doctor, you may step down.  
21 Thank you very much.

22 THE WITNESS: Thank you.  
(Witness retires)

23 THE COURT: State, call your next witness.

24 MR. GILL: We call Dr. Sisler.  
25

1 THE COURT: And while Dr. Sisler is coming  
2 up, I do want to talk to the attorneys briefly.

3 (BENCH CONFERENCE PROCEEDINGS)

4 THE COURT: Mr. Moore, there was one  
5 additional grounds the reason I permitted the  
6 photograph, and I wanted to make that part of the record  
7 at this time, and that's regarding Article 38.36. In  
8 all prosecutions for murder, the State or the Defendant  
9 shall be permitted to offer testimony as to all relevant  
10 facts and circumstances surrounding the killing and the  
11 previous relationship existing between the accused and  
12 the deceased, together with all relevant facts and  
13 circumstances going to show the condition of the mind of  
14 the accused at the time of the offense.

15 And that was an additional fact that the  
16 Court was considering.

17 MR. MOORE: I understand, Your Honor. I  
18 still don't agree with you.

19 THE COURT: I appreciate that. Thank you  
20 very much.

21 (OPEN COURT PROCEEDINGS)

22 (Witness enters courtroom)

23 THE COURT: Dr. Sisler, please raise your  
24 right hand, sir.

25 (Witness sworn)

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1 THE COURT: Please be seated, Doctor.  
2 You may proceed.

3 GARY L. SISLER,

4 having been first duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. GILL:

7 Q. Doctor, would you please tell the jury your  
8 name?

9 A. It's Dr. Gary L. Sisler.

10 Q. And, Dr. Sisler, how are you occupied or  
11 employed?

12 A. As a Deputy Medical Examiner for Tarrant,  
13 Parker, Denton and Johnson Counties.

14 Q. And how long have you been employed in that  
15 capacity?

16 A. Approximately 22 years.

17 Q. And what is your training and education that  
18 qualifies you to hold that position?

19 A. I received my D.O. degree from Kansas City  
20 College of Osteopathic Medicine and Surgery. I trained  
21 in forensic and anatomic pathology at William Beaumont  
22 Army Medical Center. I'm licensed to practice medicine  
23 in the State of Texas.

24 Q. And how long have you been licensed to practice  
25 medicine in the State of Texas?

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1 A. I believe since about 1970.

2 Q. And how long have you been involved in  
3 pathology, forensic pathology, specifically?

4 A. I -- I took combined training since 1971.

5 Q. Have you served in the military?

6 A. Yes, sir.

7 Q. In what capacity did you serve in the military?

8 A. I had a varied career. Infantry in Korea,  
9 pharmacist and physician.

10 Q. What are your duties with the Tarrant County  
11 Medical Examiner's Office?

12 A. To establish the cause of death and then how --  
13 rule on how the death occurred. We have several  
14 categories of how a death occurred. Natural manner,  
15 which is a heart attack; accident, a car wreck; suicide,  
16 person takes their own life; and then homicide.

17 Q. And generally is the type of medicine you  
18 practice known as forensic pathology?

19 A. Yes, sir.

20 Q. So tell the jury, please, what forensic  
21 pathology is.

22 A. Again, it's to establish the cause of death, to  
23 investigate suspicious death, investigate homicides,  
24 suicides.

25 Q. And have you done that on a -- on a -- on a

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1 daily or weekly basis for the last 22 years with the  
2 Tarrant County Medical Examiner's Office?

3 A. Yes, sir.

4 Q. Were you employed by the Tarrant County Medical  
5 Examiner's Office on December the 18th of 2009?

6 A. Yes, sir.

7 Q. And did you happen to be working in the morgue  
8 that day?

9 A. Yes, sir.

10 Q. Who is Dr. Lucille Tennant?

11 A. She was a fellow that was in training with us  
12 at that time.

13 Q. And as a -- as a fellow in training, did she  
14 work with you, or did you work with her in the -- in the  
15 conducting of autopsies in Tarrant County, Texas, for a  
16 period of time?

17 A. Yes, sir.

18 Q. And on December the 18th of 2009, did you  
19 assist her in conducting an autopsy which has received  
20 your case number, 0914835?

21 A. Yes, sir.

22 Q. And does each case that comes into your office  
23 receive a unique case number?

24 A. Yes, sir.

25 Q. So is the case number of 0914835 unique to the

1 case that you and Dr. Tennant conducted an autopsy on on  
2 December the 18th of 2009?

3 A. Yes, sir.

4 Q. And how do you begin your autopsy? How did you  
5 do that on that particular date with regard to this  
6 particular case?

7 A. First we do an external examination noting any  
8 abnormalities, recording them with photography and line  
9 drawings.

10 After that, then we proceed to enter the  
11 chest and examine the heart, the lungs, again noting any  
12 abnormalities. And then after that, we proceed to the  
13 abdomen, examine the abdominal organs, and then after  
14 that, we proceed to examine the head and the brain,  
15 again, documenting any abnormalities.

16 Q. And Case No. 0914835, on December 18th of 2009,  
17 how did this particular body present to you?

18 A. There were external thermal injuries; in other  
19 words, burns.

20 Q. Okay. And how extensive were those thermal  
21 injuries?

22 A. Almost a hundred percent of the body.

23 Q. Okay. So would it be a fair statement that the  
24 body you observed in this case number was almost 100  
25 percent burned?

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1 A. Yes, sir.

2 Q. Okay. And did your inspection of the body at  
3 that time reveal anything else about it?

4 A. There was some head trauma that -- after --  
5 we documented the head trauma after we cleaned the --  
6 the skull off.

7 Q. And what -- what did that -- that head trauma  
8 consist of?

9 A. Multiple skull fractures.

10 Q. Was that body capable of being identified in  
11 the -- in the condition it was presented to you?

12 A. No, sir.

13 Q. Were you capable -- was it capable -- were you  
14 capable of making an age assessment on that body in the  
15 position it was presented to you?

16 A. No, sir.

17 Q. And why was that?

18 A. Because all the external features were burned  
19 away.

20 Q. Tell the jury what pugilistic posturing is.

21 A. This is a posture that after thermal injuries,  
22 the -- the muscles that flex your arms contract, and the  
23 pugilistic deal is where the arms are drawn up  
24 against -- over the front of the body similar to a  
25 fighter.

1 Q. You said that's something that's caused by the  
2 reaction to heat?

3 A. Yes, sir.

4 Q. Did this -- did this -- well, I take it this  
5 body had been in a fire. Is that how it appeared to  
6 you?

7 A. Yes, sir.

8 Q. All right. Did the fire cause partial  
9 detachment of anything?

10 A. I think there were extremities. I think the  
11 right -- right hand was amputated. The skin over the  
12 body, arms, was burned away exposing the -- the muscle  
13 and bone.

14 Q. And you said after your external examination  
15 you do a -- an incision in the chest?

16 A. Yes, sir.

17 Q. And did you -- you proceeded with your autopsy  
18 on this body on that occasion?

19 A. Yes, sir.

20 Q. Okay. Were there any -- any findings of note  
21 in -- in the chest cavity?

22 A. No, sir.

23 Q. Were there any findings of note anywhere on  
24 this body, particularly from the -- from the neck down?

25 A. I -- I'll take that back, sir. You have some

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1 atherosclerosis in the coronary arteries.

2 Q. What is that just for --

3 A. It's the narrowing of the coronary arteries  
4 that supply the heart. They're partially closed off  
5 with fatty deposits.

6 Q. Okay. Would you describe to the jury what your  
7 examination of the -- of the head of this individual  
8 revealed?

9 A. Multiple right-sided depressed skull fractures.

10 Q. And for -- for those of us who don't practice  
11 medicine, what is a depressed skull fracture?

12 A. That means there's a depressed fracture of  
13 the -- with the right side of the body.

14 Q. Did it appear that this individual had been  
15 struck by some type of object?

16 A. Yes, sir.

17 Q. Based upon your training and your experience,  
18 did you have a suspicion at that time what that object  
19 might be?

20 A. It was -- it would be a blunt object, sir.

21 Q. Is a baseball bat or a bat a blunt object?

22 A. I would say so, sir.

23 Q. Would these injuries that you found with regard  
24 to Case No. 0914835 be consistent with that individual's  
25 head being struck by a bat?

1 A. Yes, sir.

2 Q. Do you have an opinion as to how much force  
3 this individual's head -- how much force was used by  
4 that bat to strike the individual's head?

5 A. I would say a high velocity of blunt injury.

6 Q. Since the body came in -- to you in a burned  
7 condition, did you take any additional steps to inspect  
8 it to see whether or not the fire had caused the death  
9 of the individual?

10 A. Inspection, sir.

11 Q. Okay. And what did you inspect?

12 A. We -- from a fire fatality, we look to see if  
13 there's soot in the airways.

14 Q. Did you find soot in the airways of this body?

15 A. No, sir.

16 Q. You also inspect the lungs?

17 A. Yes, sir.

18 Q. And what did you find with regard to the lungs?

19 A. No evidence of soot in the deep air -- deeper  
20 airways and mostly pulmonary edema.

21 Q. What did all that indicate to you with regard  
22 to the fire?

23 A. That the -- the person was dead during the  
24 fire.

25 Q. Now, who is Dr. Dana Austin?

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1 A. She's our forensic anthropologist.

2 Q. And what is her job description at the Tarrant  
3 County Medical Examiner's Office?

4 A. She examines skeletons, specializing in bone  
5 pathology.

6 Q. And did she have occasion to examine this  
7 particular body?

8 A. Yes, sir.

9 Q. And were her skills used to help reconstruct  
10 the skull on this particular body?

11 A. Yes, sir.

12 Q. Doctor, I'm going to show you what has been  
13 marked as State's Exhibits No. 353 through 367 and ask  
14 if you'd take a second and look through these and see if  
15 you recognize each of these as being photographs that  
16 were taken at your direction or by you during this  
17 particular autopsy?

18 A. (Witness complies).

19 Q. Okay, Doctor. Do you recognize the scene  
20 depicted in each of those photographs?

21 A. Yes, sir.

22 Q. And were each of those photographs taken during  
23 the autopsy of Case No. 0914835?

24 A. Yes, sir.

25 Q. Do the photographs that you've just seen, which

1 are State's Exhibit 353 through 367, illustrate the  
2 condition the body appeared when you first saw it?

3 A. Yes, sir.

4 Q. And there -- are there also various photographs  
5 taken during different points in the autopsy?

6 A. Yes, sir.

7 Q. Do the photographs illustrate the -- the damage  
8 that was done to the skull of this individual?

9 A. Yes, sir.

10 Q. And do they illustrate some of Dr. Austin's  
11 work in reconstructing the skull?

12 A. Yes, sir.

13 Q. Do they illustrate the -- the depressed skull  
14 fractures that you've described earlier to the jury?

15 A. Yes, sir.

16 Q. Do they also illustrate the -- the extensive  
17 thermal damage to the body?

18 A. Yes, sir.

19 MR. GILL: We offer 353 through 367.

20 (BENCH CONFERENCE PROCEEDINGS)

21 MR. MOORE: Judge, I have no objection to  
22 353 through 358, the photographs that depict the way  
23 they appeared at the time of -- of the autopsy.

24 THE COURT: Those will be admitted.

25 MR. MOORE: I object to 359, 360, 361, 362,

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1 363, 364, 365, 366 and 367, as each of them depicts the  
2 scene after a portion of the skull removed in autopsy.

3 THE COURT: Mr. Gill, your response?

4 MR. GILL: First of all, these photographs  
5 were originally taken in color, and we have only  
6 reproduced these particular exhibits in black and white  
7 so that we can -- we can minimize the effect on the  
8 jury.

9 Second of all, they're relevant to show the  
10 condition the skull was in and the means that these --  
11 that these medical professionals had to go through in  
12 order to reconstruct the skull and examine it to arrive  
13 at a cause of death, which is -- which is the  
14 underpinnings of the relevance is to illustrate the --  
15 the cause of death being blunt trauma to the head.

16 THE COURT: So Exhibits 359 or -- and --  
17 through 367 is to establish the manner of death by blunt  
18 force trauma?

19 MR. GILL: That's correct.

20 THE COURT: Okay. Now, you're minimizing  
21 by making them black and white photographs. Now, did  
22 any other experts rely upon the photographs in  
23 anticipation? I believe you said something about an  
24 anthropologist; is that correct?

25 MR. GILL: Dr. Sisler worked with Dr.



1 Austin, a forensic anthropologist in -- in the  
2 reconstruction and examination of this skull.  
3 THE COURT: Okay. Did she refer to these  
4 photographs for the purposes of her work?

MR. GILL: Yes, she did; although, she's  
6 not going to testify.

7 THE COURT: She is not going to testify?  
8 Okay.

9 Now, the Court finds that -- well, 359  
10 through 367, to establish the manner and means of death  
11 and the efforts to establish beyond a reasonable doubt  
12 the State's burden caused the death caused by blunt  
13 force trauma should be and will be considered by the  
14 jury. Your objection is overruled.

15 Was there anything else that you wanted to  
16 add, Mr. Moore?

17 MR. MOORE: No, Judge.

18 THE COURT: All right. Yes, sir?

19 MR. MOORE: I -- I do have a 403 objection  
20 to those same numbers, Your Honor.

21 THE COURT: All right.

22 MR. MOORE: The relevance -- the basis of  
23 the 403 objection is each of those photographs is taken  
24 at a time, after they have already removed the skull  
25 from -- a portion of the skull from the body. They've

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1 cleaned the skull in some -- in a number of the  
2 photographs, and I think that the -- the photograph,  
3 because the -- it does not reflect the way that the body  
4 appeared at the time that they received it, but it  
5 reflects after they have done a surgical intervention is  
6 more prejudicial than probative.

7 THE COURT: Well, first off, is that there  
8 hasn't been any -- there hasn't been any testimony about  
9 any medical intervention for life-saving efforts.

10 MR. MOORE: No, and -- and I must have  
11 misspoke. I mean, as part of the autopsy they removed  
12 it --

13 THE COURT: Okay. Now, as part of the  
14 autopsy, as we all understand autopsies through our  
15 experiences, is that that's necessary to establish the  
16 cause of death in that it is normal and it's part of the  
17 autopsy procedure to show to the jury and prove to the  
18 Defense what -- what steps were taken to perform a  
19 correct autopsy.

20 And as a result of your 403 objection,  
21 after conducting a balancing test, is that the probative  
22 value substantially outweighs the prejudicial effect and  
23 should be considered by the jury under the  
24 circumstances.

25 MR. MOORE: All right.

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1 THE COURT: Thank you.

2 (OPEN COURT PROCEEDINGS)

3 THE COURT: Members of the jury, State's  
4 Exhibit 353 through 367 are admitted.

5 (State's Exhibit Nos. 353-367 admitted)

6 Q. (BY MR. GILL) Dr. Sisler, although numerous  
7 photographs were taken during your autopsy in Cause No.  
8 0914835, did you also have occasion to create some  
9 sketches that illustrated the -- the injuries to this  
10 individual?

11 A. Yes, sir.

12 Q. And did you and Dr. Austin collaborate and  
13 sketch some three-dimensional -- make a  
14 three-dimensional sketch on a model skull for  
15 presentation to the jury of the injuries to this  
16 individual's skull?

17 A. Yes, sir.

18 Q. Let me show you what's been marked as State's  
19 Exhibit No. 271C, and ask if you recognize 271C?

20 A. Yes, sir.

21 Q. And is 271C a -- an exhibit that you and Dr.  
22 Austin prepared to illustrate to the jury what you found  
23 with respect to this case?

24 A. Yes, sir.

25 Q. And is it a true and accurate representation of

230

1 your findings in this case?

2 A. Yes, sir.

3 MR. GILL: We offer 271C.

4 MR. MOORE: Judge, I don't have any  
5 objection.

6 THE COURT: 271C is admitted.

7 (State's Exhibit No. 271C admitted)

8 MR. GILL: May I have the doctor step down  
9 in front of the jury, please?

10 THE COURT: That's granted Mr. -- Dr.  
11 Sisler.

12 Q. (BY MR. GILL) If you would, Doctor, would you  
13 take 271C --

14 THE REPORTER: I'm sorry. Excuse me.

15 MR. GILL: I'm sorry. Sorry.

16 Q. (BY MR. GILL) Would you take 271C and  
17 illustrate to the jury what you found in reference to  
18 the skull of this individual?

19 A. This is the right side of the head. As  
20 illustrated here, there's a large area outlined in  
21 purple, a depressed skull fracture. Then this is  
22 involving, as I say, the right side of the head,  
23 fractures extend into the mandible, the -- the orbit and  
24 the maxillary sinus.

25 And then extending from the posterior,

1 there's another fracture that extends across the -- the  
2 back of the head and ends in a -- in a burned area. And  
3 then in front of the depressed skull fracture, then  
4 there's another fracture that extends across the left  
5 side. They meet in a burned area of the skull.

6 Q. So for -- so for purposes of the record, do  
7 the -- do the purple lines on State's Exhibit 271C  
8 indicate fractures?

9 A. Yes, sir.

10 Q. And what do the black lines on the -- on the  
11 model illustrate?

12 A. The sutures of the skull.

13 Q. And what are the sutures of the skull?

14 A. It's where the different bones meet.

15 Q. So -- so the sutures are a natural process?

16 A. Yes, sir.

17 Q. Thank you, Doctor.

18 If you could, while you're up, let me show  
19 you what has been marked as State's Exhibits 271A and  
20 271B and ask if you recognize each of these items?  
21 Let's take 271B first, since it's in front.

22 Do you recognize 271B?

23 A. Yes, sir.

24 Q. Do you recognize 271A?

25 A. Yes, sir.

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1 Q. And are both of these exhibits blow-ups of  
2 sketches that were done by you during the course of this  
3 autopsy -- you or Dr. Tennant during the course of this  
4 autopsy?

5 A. Yes, sir.

6 Q. And do they truly and accurately depict your  
7 findings in Case No. 0914835?

8 A. Yes, sir.

9 MR. GILL: We offer 271A and B.

10 MR. MOORE: Judge, I've seen the exhibits,  
11 and I don't have any objection.

12 THE COURT: 271A and B are admitted.

13 (State's Exhibit Nos. 271A, 271B admitted)

14 Q. (BY MR. GILL) And, Dr. Sisler, if you could  
15 step up to this easel, please. Let's start with 271A.

16 All right, Doctor. Would you explain to  
17 the jury what we see on State's Exhibit 271A?

18 A. On the right side here, these are what we call  
19 split -- heat-split lacerations. The -- the -- the heat  
20 causes a stretching of the skin, and as it stretches, it  
21 splits. There's heat splits here, here and then over  
22 the right side of the face.

23 On this one we depicted in not -- not as  
24 great detail as on the mannequin. This area is the area  
25 of depressed fracture that I mentioned already.

1 Q. And on the -- the left side of the -- the

2 skull, were there --

3 A. There was some -- some burned area in this  
4 area. Actually, the left side of the face and left side  
5 of the body, which the other one I'll talk about.

6 This -- the left side, was spared.

7 Q. So the left side was spared the -- the thermal  
8 damage which had occurred to the right side?

9 A. Yes, sir.

10 Q. And then 271B?

11 A. This is the pugilistic attitude that -- that  
12 was mentioned already. This is where the arms are  
13 pulled up over the front of the chest like a fighter,  
14 and that's due to the contraction of the flexor muscles.  
15 They're stronger than the extensor muscles, and the heat  
16 causes them to come up into what we call pugilistic or a  
17 fighter position.

18 Then all the chest was blackened and  
19 charred, and there was a large defect of the abdomen  
20 that was burned away with the intestines protruding.  
21 There's extensive heat damage of the -- of the upper  
22 extremities.

23 And I think I mentioned this already.

24 There was a heat amputation of the right hand and then  
25 over this -- this extremity, all of the -- the -- there

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1 was burning and charring of the extremity with exposure  
2 of muscles.

3 And then this is an area of sparing that  
4 was on the left side of the body. These extremities  
5 were blackened and charred. The skin over the -- the  
6 right kneecap was burned away exposing the kneecap.

7 On the back we had extensive black and  
8 charred skin. There was a large defect with exposure of  
9 the bone -- pelvic bone and the posterior chest wall,  
10 and then this is a back view of the sparing. All the  
11 extremities were -- the skin was burned away exposing  
12 the muscle and bone.

13 Q. And as a -- as a result of the autopsy and  
14 inquest you performed here, as a result of your  
15 examinations, did you come to a conclusion as to what  
16 caused the death of this individual?

17 A. We said the cause of death was blunt force  
18 trauma of the head.

19 Q. And did you arrive at a -- a manner of death?

20 A. Yes, sir.

21 Q. And what was that?

22 A. Homicide.

23 Q. Thank you, Doctor. Go ahead and take your  
24 seat.

25 A. (Witness complies).

1 Q. Now, Doctor, you mentioned earlier that this  
2 individual was not capable of being identified; is that  
3 correct?

4 A. Yes, sir.

5 Q. And as part of your responsibilities as -- as a  
6 Deputy Medical Examiner for Tarrant County, Texas, do  
7 you have the responsibility to try to identify this  
8 individual?

9 A. Yes, sir.

10 Q. And in -- in order to do so -- in order -- for  
11 other purposes, do you collect samples from the body at  
12 the time of autopsy?

13 A. Yes, sir.

14 Q. And are some of those samples that you collect  
15 blood cards that could be used later on to obtain a DNA  
16 profile in order to arrive and establish the identity of  
17 this individual?

18 A. Yes, sir.

19 Q. Let me show you what has been marked as State's  
20 Exhibit No. 378 and ask if it bears the -- the case  
21 number that we've been referring to, 0914857?

22 A. Yes, sir.

23 Q. Okay. And is that -- does that exhibit portray  
24 some forensic samples that were collected in connection  
25 with this case?

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1 A. Yes, sir.

2 Q. And do you recognize it?

3 A. Yes, sir.

4 Q. And was that collected -- was that item  
5 depicted there collected -- what is it, please? What is  
6 the item that was collected?

7 A. It's what we call a blood card. It's actually  
8 a piece of cardboard that we put a -- a drop of blood  
9 on.

10 Q. And at the -- at the end after it's collected,  
11 is it sealed in the small coin envelope that appears in  
12 the upper left-hand corner of the photograph?

13 A. Yes, sir.

14 Q. And is that coin envelope then sealed within  
15 the larger envelope that appears on the right-hand side  
16 of the photograph?

17 A. Yes, sir.

18 MR. GILL: Your Honor, we offer at this  
19 point without condition State's Exhibit No. 378.

20 MR. MOORE: Judge, I have no additional  
21 objection.

22 THE COURT: 378 is admitted for all  
23 purposes.

24 (State's Exhibit No. 378 admitted)

25 Q. (BY MR. GILL) Doctor, let me now show you

1 what's been marked as State's Exhibit No. 441, and if  
2 you could refer to the left-hand -- the photograph on  
3 the left-hand side of page 1 and see if you recognize  
4 another blood card that was drawn in connection with  
5 this particular case we've been speaking of?

6 A. Yes.

7 Q. Okay. Is that the -- it's in the -- the  
8 left-hand column, the third from the top? 0914837; is  
9 that correct?

10 A. That's from the other case, sir.

11 Q. Okay. I'm sorry. 0914835; is that correct?

12 A. Yes, sir.

13 Q. I'm sorry. I misspoke on this -- on State's  
14 Exhibit No. 378, Doctor. This was Case No. 0914835,  
15 correct?

16 A. Yes, sir.

17 Q. All right. And you recognize it?

18 A. Yes, sir.

19 Q. The 091857 I was referring to, you recognize  
20 that as being a number of the University of North Texas  
21 Health Science Center?

22 A. Yes, sir.

23 Q. Okay. I apologize for that.

24 So the -- with regard to State's Exhibit  
25 No. 441, you're referring to the envelope that's in the

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1 upper left-hand corner of the photograph; is that  
2 correct?

3 A. Yes, sir.

4 Q. 0914835?

5 A. Yes, sir.

6 Q. Does that envelope contain another blood card  
7 that you connect -- collected in connection with this  
8 case?

9 A. Yes, sir.

10 Q. And that same day, Doctor, did you have  
11 occasion to perform another autopsy?

12 A. Yes, sir.

13 Q. And if I could direct your attention to Case  
14 No. 0914837.

15 A. Yes, sir.

16 Q. And was this -- did you also come across this  
17 body in your morgue on that -- that same date, December  
18 18th of 2009?

19 A. Yes, sir.

20 Q. And how did the body in this particular case  
21 present to you?

22 A. It's a -- was with global charring.

23 Q. Could you tell -- well, what do you mean by  
24 global charring?

25 A. Total burns.

1 Q. Was this a -- was this a large body or a small  
2 body?

3 A. Small body, sir.

4 Q. And did it appear to be consistent with a body  
5 of a child?

6 A. Yes, sir.

7 Q. And during the course of your autopsy, did you  
8 come to learn the sex of this particular child?

9 A. Yes, sir.

10 Q. And what sex was the child?

11 A. A female.

12 Q. And you said the body presented to you with  
13 global charring. Could you explain that in a little  
14 more detail to the jury, please?

15 A. The whole surface of the body showed burns.

16 Q. Was it -- was it burns, or was it extensive  
17 burns?

18 A. Extensive.

19 Q. And how -- how deep did those burns go?

20 A. Full thickness.

21 Q. And full thickness of the skin?

22 A. Yes, sir.

23 Q. All right. Did you have occasion to more  
24 closely inspect the head of the -- of the body that was  
25 delivered to you in connection with this case?

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1 A. Yes, sir.

2 Q. And what did your inspection reveal?

3 A. After the -- the skin, we cleansed the --  
4 the -- the skull. There was extensive fractures, again  
5 on the right side and extended as one fracture line  
6 extended from the depressed fracture across the -- the  
7 front of the skull and ended up in the left side.

8 Q. After your visual inspection, were photographs  
9 taken of this particular body?

10 A. Yes, sir.

11 Q. And did you also do sketches in this particular  
12 case, as you did in the other case you've testified to?

13 A. Yes, sir.

14 Q. And did you go ahead and conduct a -- the  
15 Y-shaped incision and -- and do an autopsy of the -- the  
16 chest cavity of this individual?

17 A. Yes, sir.

18 Q. And did that reveal anything of note?

19 A. No, sir.

20 Q. Now, you mentioned with regard to the other  
21 case number we just got done discussing that one of  
22 your -- one of the important aspects of the body that  
23 you examined was to examine to see if there's any soot  
24 in the -- in the breathing areas of the body. Did you  
25 conduct that same examination with regard to this case?

1 A. Yes, sir.

2 Q. And what were your findings?

3 A. The airways were negative for soot.

4 Q. And what does that mean to you?

5 A. That the -- the decedent was dead before the  
6 fire.

7 Q. Doctor, let me hand you what's been marked as  
8 368 through 375 and ask you to examine each of these.

9 A. (Witness complies).

10 Q. And, Doctor, do you recognize each of the  
11 photographs contained in State's Exhibits 368 through  
12 375?

13 A. Yes, sir.

14 Q. And were these photographs all taken during  
15 your autopsy of the body we've been discussing?

16 A. Yes, sir.

17 Q. Did Dr. Austin collaborate with you in this  
18 case also?

19 A. Yes, sir.

20 Q. Did you and she also prepare a series of  
21 sketches with regard to the condition of this body at  
22 the time of autopsy?

23 A. Yes, sir.

24 Q. Do the photographs illustrate the condition the  
25 body was in when it was presented to you at the morgue?

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1 A. Yes, sir.

2 Q. And does it further illustrate the efforts you  
3 and Dr. Austin had to go through to reconstruct the  
4 skull of the individual and then arrive at a cause of  
5 death?

6 A. Yes, sir.

7 MR. GILL: We offer 370 -- I'm sorry -- 368  
8 through 375.

9 (BENCH CONFERENCE PROCEEDINGS)

10 THE COURT: Go ahead, Mr. Moore.

11 MR. MOORE: Judge, I'm going to object to  
12 all of the exhibits, 368 through 375, on the basis that  
13 they are not relevant to the Indictment in this case.  
14 He's not charged in this Indictment with the murder of  
15 the child, Jodi Hummel, and therefore, these -- these  
16 photographs are not relevant to prove any fact that's  
17 necessary to be proved before this jury.

18 I specifically object to Exhibits No. --  
19 beginning with No. 368, 369 and 370 appear to purport  
20 the body the way that it appeared at the morgue.

21 Beginning with 371 through 375, the  
22 exhibits depict scenes after the Medical Examiner's  
23 Office has cleaned the skull, removed pieces of the  
24 skull, attempted to piece pieces back together, and they  
25 don't depict the scene as the way that it appeared at

1 the time. So we feel like they are not admissible.

2 I also object on the basis that all of  
3 these are not -- are more prejudicial than they are  
4 probative.

5 THE COURT: State, your response?

6 MR. GILL: Your Honor, we would have the  
7 same -- same reasoning and rationale for offering these  
8 as we did the autopsy on the other case that Dr. Sisler  
9 just testified to. Obviously, this is same transaction  
10 contextual evidence in connection with the -- the case  
11 on trial. We believe they're relevant. And their  
12 probative value is not substantially outweighed by  
13 prejudicial effect.

14 And again, the -- the originals of these  
15 are in color. We have made these exhibits in black and  
16 white to reduce the -- the effect on the jury, and also  
17 it's -- just like for Mr. Bedford, which I didn't get to  
18 add for the record, the -- the uncanceled photographs are  
19 more gorier than the photographs that we have included  
20 here, which show the -- the body parts and -- and  
21 cleaned up at autopsy.

22 THE COURT: For the reasons stated by the  
23 State, the Court does find that the State's Exhibits 368  
24 through 375 should be considered by the jury. I'm  
25 specifically overruling your 403 objection after

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1 taking -- conducting a -- a balancing examination.

2 Furthermore, under Article -- Texas Code of  
3 Criminal Procedure 38.36, in murder cases that  
4 information and circumstances involving the family are  
5 admissible, particularly with regard to, one,  
6 establishing the identity of the individual, the manner  
7 and means of the death and to show that it was  
8 contextual -- contextual and transactional.

9 Given those factors, the Court has  
10 determined that the evidence should be and will be  
11 considered by the jury.

12 Your objection is overruled.

13 Are there any other rulings that you  
14 require?

15 MR. MOORE: Not at this point, Judge.

16 THE COURT: All right.

17 (OPEN COURT PROCEEDINGS)

18 THE COURT: Members of the jury, State's  
19 Exhibits 368 through 375 inclusively are admitted.

20 (State's Exhibit Nos. 368-375 admitted)

21 Q. (BY MR. GILL) Dr. Sisler, did you also -- you  
22 testified you also had occasion to prepare some sketches  
23 with regard to this case; is that right?

24 A. Yes, sir.

25 Q. If I could have you step down and take a look

1 at State's Exhibit Nos. 270A through 270G and see if you  
2 recognize each of these as being sketches that you  
3 prepared in connection with this autopsy in Cause No.  
4 0914837?

5 A. (Witness complies).

6 Q. Doctor, do you recognize State's 270A through  
7 G?

8 A. Yes, sir.

9 Q. And do each of them accurately depict the scene  
10 as you observed it on December the 18th of 2009?

11 A. Yes, sir.

12 Q. Will they assist you in explaining your work to  
13 the jury?

14 A. Yes, sir.

15 MR. GILL: We offer 270A through G.

16 MR. MOORE: Judge, I have seen the diagram.  
17 I have no objection.

18 THE COURT: 270A through G are admitted.

19 (State's Exhibits 270A, 270B, 270C, 270D,  
20 270E, 270F, 270G admitted)

21 Q. (BY MR. GILL) Doctor, while you're there, let  
22 me show you 270H and ask you if that is an exhibit that  
23 was prepared by you and Dr. Austin?

24 A. Yes, sir.

25 Q. And do 207H accurately portray the injuries

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1 that were inflicted on this body as it was presented to  
2 you on December the 18th of 2009?

3 A. Yes, sir.

4 Q. And will that assist you in explaining your  
5 testimony to the jury?

6 A. Yes, sir.

7 MR. GILL: We offer 270H.

8 MR. MOORE: Judge, I have seen that exhibit  
9 and I have no objections.

10 THE COURT: 207H is admitted.

11 (State's Exhibit No. 270H admitted)

12 MR. GILL: May the Doctor step in front of  
13 the jury and show them 270H, Your Honor?

14 THE COURT: He may.

15 THE WITNESS: The back of the head was  
16 burned, fragmented and missing, the -- the missing parts  
17 illustrated with the ruler. And then on the right side,  
18 we have another depressed skull fracture that extends  
19 over the right side, and then there's a process called  
20 the mastoid process below the ear canal that's  
21 fractured.

22 Then we have fracture lines extending from  
23 the mastoid process anterior into the zygomatic bone.

24 It's the bone that connects the frontal bone and face to

25 the temporal bone here.



1 Then there's another fracture that extends  
2 from the back of the depressed fracture across the front  
3 of the skull and ends in -- in a bone -- burned bone on  
4 the left here.

5 Q. (BY MR. GILL) So what type of injuries were  
6 they that you observed to the skull of this individual?

7 A. Multiple right-side skull fractures.

8 THE REPORTER: I'm sorry, sir?

9 THE WITNESS: Multiple right-side skull  
10 fractures.

11 Q. (BY MR. GILL) Thank you, Doctor.

12 I'm going to show you -- ask you to  
13 illustrate these charts to the jury next, if you don't  
14 mind, starting with State's Exhibit 270A.

15 A. This is a -- a side view of the back of the  
16 right side that I mentioned that was burned away, and  
17 then we have the fracture extending from the right  
18 across the frontal skull ending in a -- a unboned burned  
19 area.

20 Q. And then 270B?

21 A. This was the area of a depressed skull  
22 fracture. We have a fracture that -- mastoid process.  
23 It extended into the zygomatic process that connects the  
24 maxillary bone and the frontal bone to the temporal  
25 bone.

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1 This is the fracture that extended from the  
2 depressed fracture across the left -- or right side of  
3 the skull and ended up over here in bone -- burned bone.  
4 This is the area that was missing charred -- charred  
5 fragmented bone.

6 Q. Doctor, 270C, please.

7 A. This is an illustration of the right extremity.  
8 The skin's burned away over the right upper arm, the  
9 exposure of bone and muscle, and then we have a heat  
10 amputation of the forearm at the elbow -- the elbow, and  
11 this part was amputated.

12 Then we have illustration of the skin  
13 burned away with exposure of bone and muscle over the  
14 right side, and then we have heat amputation of the  
15 right lower leg.

16 Q. And then, Doctor, 270D?

17 A. This is a posterior view of the skin of the  
18 buttocks that's burned away with exposure of the pelvic  
19 bones. And then in this illustration, we have the  
20 skin's burned away of the left arm with exposure of the  
21 bone with a heat fracture of the -- of the left arm.

22 And then we have -- the skin's burned away  
23 with exposure of the right arm with muscle and bone  
24 exposed and a heat amputation at the elbow.

25 Q. And, Doctor, 270E, as in Edward?

1 A. Then we have the skin that's burned away over  
2 the -- the right pelvic area with exposure of bone and  
3 muscle, and then we have another heat amputation of the  
4 right mid-thigh here.

5 Q. And then Exhibit F?

6 A. Again, this is the illustration, the skin is  
7 burned away from the left thigh and with heat amputation  
8 to the left lower leg.

9 Q. And then Exhibit G?

10 A. I title this as global charring, which I use  
11 the -- when I say "global," the whole body is burned.  
12 And we have the burned away skin of the anterior chest,  
13 and this -- I have -- it's intact blackened charred skin  
14 over the chest and abdomen.

15 Here we have charred loss of the eyes and  
16 skin of the face, and then when we have the heat  
17 fractures posterior -- this is all missing that I  
18 mentioned before, and then we have what we call cooked  
19 brain protruding, and then we have charred blackened  
20 skin over the back.

21 And then on this side, the left side, we  
22 have the skin and ribs burned away with exposure of  
23 charred lungs and small intestine.

24 And then we have over the right side, the  
25 burned away skin with exposure of the ribs of the right

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1 flank, and it's the right --

2 THE REPORTER: I'm sorry? I'm sorry?

3 THE WITNESS: Subcutaneous tissue burned  
4 away with exposure to charred liver and intestines.

5 Q. (BY MR. GILL) Would you repeat the last  
6 portion of your answer? I don't think everybody heard  
7 it.

8 A. The -- over the right flank, the right side of  
9 the body, the skin is burned away, and we have exposure,  
10 burned liver and intestines in this area.

11 Q. Thank you, Doctor.

12 Doctor, was this body capable -- capable of  
13 being visually identified?

14 A. No, sir.

15 Q. And again, just like with the other autopsy you  
16 testified to here earlier today, did you have occasion  
17 to retain, for later identification purposes and later  
18 testing, certain forensic samples from this body?

19 A. Yes, sir.

20 Q. And did those include obtaining blood cards  
21 that could be used for DNA profiling purposes?

22 A. Yes, sir.

23 Q. Let me show you what's been marked as State's  
24 Exhibit No. 376 and ask if you are able to recognize the  
25 exhibits portrayed in State's 376.

1 A. Yes, sir.

2 Q. And were those samples that were obtained by  
3 you for use in this Case No. 0914837?

4 A. Yes, sir.

5 Q. And was the blood card sealed in the coin  
6 envelope which appears in the upper left-hand corner of  
7 that photograph?

8 A. Yes, sir.

9 Q. And was the coin envelope then sealed inside  
10 with inside -- within the larger envelope that appears  
11 on the right side of the photograph?

12 A. Yes, sir.

13 MR. GILL: At this point, Your Honor, we're  
14 going to offer State's 376 without condition for all  
15 purposes.

16 MR. MOORE: I have no additional  
17 objections, Your Honor.

18 THE COURT: 376 is admitted for all  
19 purposes.

20 (State's Exhibit No. 376 admitted)

21 Q. (BY MR. BRISSETTE) Again, Doctor, let me ask  
22 you to refer to State's Exhibit No. 441 and ask if there  
23 is a blood card within an envelope contained on that  
24 photograph on the left-hand side on page 1?

25 A. Yes, sir.

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1 Q. And do you recognize it as being from the same  
2 Case No. 0914837?

3 A. Yes, sir.

4 Q. And was that blood card drawn and prepared at  
5 your direction in connection with this case?

6 A. Yes, sir.

7 MR. GILL: At this point, Your Honor, we're  
8 going to offer State's Exhibit No. 441 without  
9 condition.

10 MR. MOORE: I have no additional  
11 objections, Your Honor.

12 THE COURT: 441 is admitted for all  
13 purposes.

14 (State's Exhibit No. 441 admitted)

15 THE COURT: Your Honor, now that all the  
16 condition precedents have been satisfied, the State  
17 offers 442 for all purposes.

18 MR. MOORE: Judge, I have the same  
19 objections that we previously made, plus I object that  
20 442 is essentially a summary of testimony that was given  
21 in front the jury by Ms. Van Winkle. It's a  
22 demonstrative exhibit. It's not an exhibit itself.

23 THE COURT: All right. Let me visit with  
24 the State and the Defense over here.

25 (BENCH CONFERENCE PROCEEDINGS)

1 THE COURT: Let me take a look at the  
2 exhibit, please.

3 Oh, yes, I remember this now.

4 Okay. And your objection again is?

5 MR. MOORE: My objection is --

6 THE REPORTER: I'm sorry. Speak into the  
7 microphone, please.

8 MR. MOORE: I'm sorry.

9 My objection is it's a summary of the  
10 testimony. They went through the chart exhibit by  
11 exhibit as they had her testify, and then they  
12 summarized her testimony over here on the far right part  
13 of the chart. And what you've got is essentially a  
14 summary of her testimony.

15 And my objection is that it well may have  
16 been usable in front of the jury as a jury aid or as a  
17 demonstrative exhibit, but it's not evidence. The  
18 evidence is what she said, and so I object on that  
19 basis.

20 THE COURT: Do you have a response?

21 MR. GILL: Well, that's why we're offering  
22 it because her testimony was long and it was detailed  
23 and this was an accurate summary of her testimony and as  
24 it relates to all the different exhibits that were  
25 admitted during the -- the course of the trial.

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1 THE COURT: It was voluminous, and not only  
2 that, but it is an essential to this -- to the  
3 Prosecution presenting its case. Your objection is  
4 overruled. 442 is admitted.

5 MR. MOORE: Judge, we also --

6 THE REPORTER: I'm sorry. I can't hear  
7 you.

8 MR. MOORE: We have the same prior  
9 objections that we made in connection with all those --  
10 the depict -- the photographs and things that are  
11 contained are the results of the search, which we -- the  
12 searches that were done which we raised in the Pretrial  
13 Motions to Suppress, and so we would renew those  
14 objections as well as the -- the new objections that  
15 I've made at this point.

16 THE COURT: Thank you for clarifying that.  
17 Your objection is noted, continues to be overruled, and  
18 you have a running objection with regard to those  
19 matters. 442 is still admitted.

20 Yes, Mr. Cummings?

21 MR. CUMMINGS: Your bailiff just told me  
22 the jury wants a break.

23 (OPEN COURT PROCEEDINGS)

24 THE COURT: All right. Members of the jury  
25 I've heard your call. I've heard your call. We're at a

1 stopping point.

2 MR. GILL: Judge, can I ask five more  
3 questions with the doctor? I can pass him on direct  
4 examination?

5 THE COURT: You may.

6 MR. GILL: Thank you.

7 THE COURT: Please continue.

8 MR. GILL: Would you tell the jury what the  
9 results of your ruling was on State's Exhibit --

10 THE COURT: 442 -- ladies and gentlemen,  
11 442 is admitted for all purposes.

12 (State's Exhibit No. 442 admitted)

13 Q. (BY MR. GILL) Now, Doctor Sisler, with regard  
14 to cause -- your Case No. 0914837, did you arrive at an  
15 opinion as to cause of death?

16 A. Yes, sir.

17 Q. And what is that opinion?

18 A. I said blunt force trauma of head.

19 Q. And the manner of death?

20 A. Homicide.

21 Q. Would the injuries suffered --

22 Well, let me ask you this first: Was  
23 this -- was this body consistent in size with that of a  
24 five-year-old child?

25 A. Yes, sir.

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1 Q. Would the injuries suffered by this  
2 five-year-old child be consistent with that  
3 five-year-old child being struck by a baseball bat?

4 A. Yes, sir.

5 Q. Let me show you what has been admitted into  
6 evidence as State's Exhibit No. 331B. Let me ask you if  
7 the injuries suffered by this five-year-old child were  
8 consistent with being struck by an item such as State's  
9 Exhibit 331B?

10 A. Yes, sir.

11 Q. With regard to the other autopsy that we  
12 discussed with you earlier, No. 0914835, the adult male,  
13 were the injuries suffered by him to his head consistent  
14 with being struck by State's Exhibit 331B?

15 A. Yes, sir.

16 Q. And, Doctor, at some point after having  
17 conducted these autopsies, did you learn from the  
18 University of North Texas Health Science Center the  
19 identity of these two bodies?

20 A. Yes, sir.

21 Q. And what did you learn was the identity of the  
22 body presented to you in Cause No -- Case No. 0914835,  
23 the adult male?

24 A. I learned he was identified as Clyde Edward  
25 Bedford.

1 Q. And with regard to your Case No. 0914837, the  
2 five-year-old child, did you learn the identity of the  
3 five-year-old child?

4 A. Yes, sir.

5 Q. And what was that?

6 A. It was -- she was identified as Jodi Ruth  
7 Hummel.

8 MR. GILL: We pass the witness, Your Honor.

9 THE COURT: Members of the jury, we have  
10 reached a stopping point, and we will break for the  
11 evening. We'll resume the trial at 9:00 a.m. tomorrow.

12 Please remember the Court's previous  
13 instructions. Do not discuss this case with anyone,  
14 including amongst yourselves, until both sides have  
15 presented their case and -- there's a number of other  
16 things that still need to be accomplished before you're  
17 sent to the jury room for your deliberations. If you  
18 have any questions regarding your instructions, please  
19 refer to the pamphlet.

20 We'll be in recess until 9:00 a.m. Thank  
21 you very much.

22 (Jury not present)

23 MR. BRISSETTE: Judge, while we're outside  
24 the presence of the jury, as a matter of housekeeping, I  
25 believe now, through the presentation of Dr. Bao, we

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1 have proved up the conditions that were placed upon  
2 State's Exhibits 250, 251, 252, 253, 254, 385, 386 and  
3 387, those being, Judge, and I would proffer to the  
4 Court that the first set of numbers was the shirt that  
5 was recovered from the body of Joy Hummel, and 386 and  
6 387 were the bra that was recovered.

7 Those were conditionally admitted when Ms.  
8 Belcher testified and --

9 THE COURT: So you're offering it for all  
10 purposes at this time?

11 MR. BRISSETTE: Yes, Your Honor.

12 THE COURT: Mr. Moore or Mr. Cummings,  
13 what's your response?

14 MR. MOORE: Judge, I don't have any  
15 additional objections other than those that we  
16 previously made in connection with those exhibits.

17 THE COURT: During the pretrial hearing?

18 MR. MOORE: Well, at the time that they  
19 were originally offered and those -- they hark back to  
20 the pretrial hearing, Judge.

21 THE COURT: All right. State's Exhibits  
22 250, 251, 252, 253, 254, 385, 386, 387 are admitted for  
23 all purposes.

24 (State's Exhibit Nos. 250-254,  
25 385-387 admitted)

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